A

TREATISE

ON THE

LAW OF ELECTIONS,

IN ALL ITS BRANCHES.

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CORRECTED AND ENLARGED.

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ADVERTISEMENT.

THE favourable reception this little Work has met with, and the apparent utility attending an enlargement of it, comprehending the printed deciſions down to the preſent time, has induced the Author to publiſh a Second Edition.

Two additional volumes of Reports by Mr. Luders, and two volumes publiſhed by Mr. Fraſer, have afforded the principal additional matter.

A learned work upon County elections publiſhed by Mr. Serj^t^. Heywood is alſo occaſionally referred to, as a work affording much uſeful information.

INTRODUCTION

THE want of a Treatife upon the Law of Elections has been too much felt to render neceffary any apology for offering one to the Public. The very confufed manner in which the fubject is handled by Mr. Juftice Blackftone, Lord Coke, and Sir Matthew Hale, make their labours of little more ufe than to mark out a general outline for others to fill up. Sir Bulftrode Whitlock, indeed, has enlarged his comment upon the parliamentary writ to two volumes quarto; but having treated the fubject rather as an hiftorian than a lawyer, his work is of little ufe in battels. The laborious collection of parliamentary writs by Mr. Prynne, affords the moft authentic hiftory of the conftitution of the repreſentative body of this kingdom, but is of little ufe in difcuffing thofe points of election laws which occur in practice.

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The knowledge of this part of the law is but of modern growth, and poſſeſſed but by few. The object of this Treatiſe, there-

fore, is to diffuſe it more generally, by collecting and arranging in a compendious ſyſtem, the acts of parliament, and ſuch determinations as have been made reſpecting the rights of election in all its branches, ſince the eſtabliſhment of the new judicature. The acts of parliament which have been made ſince the time of Glanville render his reports but of occaſional uſe; their matter, however, is ſo informing and their ſtyle ſo perſpicuous, that we have to lament the ſhortneſs of his work. The laborious index to the Journals of the houſe of commons, has, in ſome degree, leſſened the value of Carew. The reports of Mr. Douglas and Mr. Luders can alone give that extent of information upon particular points of the law of elections, which may enable the lawyer and the member of parliament to do their reſpective duties, with utility to the public and honour to themſelves. The very deſerved reputation which the reports and notes of the former have obtained for their accuracy and learning, and the ſtamp of merit they have received, from the opinion of the profeſſion itſelf, which is the ſtrongeſt teſt of their worth, juſtify the author in quoting thoſe deciſions, and ingrafting

grafting them into the general ſyſtem. He has alſo cited Mr. Luders's reports of parliamentary caſes, under a full perſuaſion that time and inveſtigation will eſtabliſh his works likewiſe upon the ſame permanent foundation. In that part which relates to county elections, thoſe determinations of the Glouceſterſhire committee in the year 1777, which appear moſt uſeful, are inſerted. Such of them as are mentioned, are taken from a publication entitled, "Reſolves of the Glouceſter Committee," for which the public is indebted to the chairman of that committee. The nature of the work has not admitted of ſo accurate a ſtatement of ſome of the caſes, as to enable one always to know the exact ground of the reſolution; but the reſolution itſelf may be depended upon as coming from ſuch authority, and very often expreſſes the reaſon upon which it is made. Uniformity in deciſions, eſpecially in matters of election, can only be attained by attention to precedents, and when once attained, is the ſureſt ſafeguard and protection of the liberty of the ſubject. The deciſion of one committee indeed, until the 28 G. 3. c. 52. did not bind another, though one cannot

but ſuppoſe that the determination of a former committee would, in all caſes, have ſome, and, in moſt, a very conſiderable weight, in the deciſion of a ſubſequent committee on the ſame point. To reaſon otherwiſe, would be to maintain that Mr. Grenville's act, was meant not to eſtabliſh a ſyſtem, but to introduce confuſion, and to leave expoſed to power or caprice the deciſions of a court of juſtice. In law, as in other ſciences, perfection is to be attained only by gradual means. By the 10 & 11 W. 3. c. 7. it is enacted that the determination of the houſe of commons upon the right of election ſhould bind the returning officer in taking the *poll*. That ſtatute is enlarged by the 2 G. 2. c. 24. whereby the laſt determination of the houſe of commons is made concluſive upon the *houſe* as to the right of election: And though the 10 G. 3. c. 16. (amended by 11 G. 3. c. 42. and made perpetual by 14 G. 3. c. 15.) which eſtabliſhes the new judicature, does not transfer to committees the ſame power of ſpecially determining on the right of election; yet by 28 G. 3. c. 52. a ſelect committee choſen under the 10 G. 3.

Dougl. Introd. to Elect. 33.

10 & 11 W. 3.

(under

(under the reſtrictions therein mentioned) is truſted with the power of binding by its deciſion the right of election, and of appointing a returning officer, where the right is litigated. And by the ſame act, ſuch committee is authoriſed to give coſts upon frivolous and vexatious petitions and defences. Theſe acts, ſo far as they relate to the practice or regulation of the new judicature, are added in the Appendix; but the 10 G. 3. c. 16. which is the foundation of the whole, is ſo printed, as to exhibit, by a marginal abridgment of the ſubſequent acts, every variation made in any ſection of that act down to the preſent period. The ſtatutes relating to the ſubject, where it was thought improper to copy them literally, will be found to be accurately abſtracted, and will in moſt caſes be found to ſupply the want of the ſtatute book itſelf. Some ſtatutes afterwards repealed, or new-modelled, are briefly ſtated for the better underſtanding of ſubſequent acts made *in pari materiâ*. In referring to the journals, the author has contented himſelf with a few precedents to the ſame point, except on queſtions of any

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nicety or doubt. It was his original intention to have comprized in this book the Scotch Law of Elections; but as that ſubject is already treated upon at large by a more experienced and able pen, he has omitted the Scotch caſes, except where adduced to prove or illuſtrate general poſitions. Matters of evidence are incidentally mentioned as they grow naturally out of the ſubject. To have gone into the doctrines of evidence more at large, would have been to have added a ſupplemental treatiſe larger than that upon the principal ſubject. The law books, therefore, muſt be referred to for ſuch information, though practice and found obſervation only can give a ready diſcrimination in this comprehenſive and difficult part of the law. On ſuch parts of the ſubject as relate to the power of the houſe of commons in ſome inſtances of incapacitating their own members, which cannot be meaſured by any rule exactly defined, the author has contented himſelf with the ſtatement of precedents, or has reſted his obſervations upon analogous reaſoning.

White on Elections.

The leiſure of an earlier period enabled the author to compile and arrange the materials

terials of this little work principally with a view to his own amuſement. It has gradually ripened into a treatiſe, which, in the judgment of ſome profeſſional friends, might become uſeful in election buſineſs.

If it ſhould conduce, in the moſt trifling degree, towards ſo deſirable an end as to facilitate the duties of the committee and bar, his wiſhes will be fully gratified.

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THE LAW OF ELECTIONS.

CAP. I.

The Hiſtory of the Writ, with Obſervations on the Riſe and Progreſs of Parliamentary Repreſentation.

THE democratic part of the conſtitution, which conſiſts in the right of chuſing repreſentatives by the commonalty of the realm, ſeems to owe its reſtoration to the weakneſs of the crown. The feeble remains of Saxon freedom, overpowered by the feudal ſyſtem, were nearly extinguiſhed. The people could hardly have recovered at ſo early a period any ſhare in the legiſlation, had not many extraordinary circumſtances concurred to have produced ſuch a revolution. The regular ſubordination of every part of the feudal ſyſtem,

made it the inclination of thoſe who ſhared its power to wiſh for its continuation. The people were held in a ſtate of vaſſalage. In ſtruggles for power, the conflict uſually was between the king and the barons. The liberties of the people at large were ſeldom heard of, but as a covering or pretext for the latter to attack and weaken the former.

Litt. Hiſt. v. 2. p. 429.

Happily for the people, the continental dominions of the crown called for armies, ſupported at firſt indeed by feudal tenure, which, in a ſhort time, was bartered for pecuniary commutation, under the name of ſcutage. This, together with the encreaſing neceſſities of the crown, and the proportionate independence of the barons, ſoon brought the people at large, eſpecially the trading part of them, into ſome conſideration. The policy of the crown raiſed a counterbalance to the power of the barons, and by giving the people conſequence, at the ſame time erected for itſelf a tower of ſtrength, and a treaſury for ſupplies. It was from this policy probably that Hen. 2. gave charters and immunities to the people, which meeting with no diſturbance from the military genius of the 1ſt Richard, ſolely occupied in foreign wars, and ſtrengthened by the weakneſs of king John, prepared the way for that conſequence to which they were ariſen at the latter end of the reign of Hen 3.

The

The extreme indigence of this monarch towards the latter period of his reign, made it neceſſary for him to look out for new ſources for ſupply. Hitherto that burden had fallen upon the land; and the towns, ſecure through their humility, had eſcaped taxation. But many of them being now grown wealthy by induſtry and commerce, began to contribute their ſhare to the public expence. Talliage, which was a tax upon perſonal property as ſcutage was upon land, was adopted about this period, and was probably the firſt and active cauſe of ſummoning delegates from thoſe places, who might have the appearance of granting what they were not ſtrong enough to refuſe. The crown indeed would ſometimes take it without attending to this form; but the ſtatute *de talliagio non concedendo*, made in the 25 E. 1. reſtrained this tyranny, and ſecured the continuation of that right, which, though ſolemnly eſtabliſhed by Hen. 3. would probably ſoon have grown into diſuſe.

Though it ſeems probable that during the Saxon æra the people had a ſhare in legiſlation, yet it is from the end of the reign of Hen. 3. only that it is poſſible for a lawyer to date the commencement of parliamentary repreſentation. The antiquary may indulge himſelf in amuſing ſpeculations upon a parliament anterior to the 49 Hen. 3. but there are no records which ſhew that the people had *a right* to any voices in matters of ſtate, much leſs

Boden de Repub. lib. 1. c. 8. Sincl. Hiſt. Rev. p. 71. Hume, v. 2. p. 272. Brady on Bor. edit. 1777. p. 68. Carew's Pref. p. 8.

Pryn. Bre. Par. Red. pt. 2. p. 3. the authorities collected.

in the form of the present constitution, as some have contended *. The crown had always indeed a *council*, to which it might summon by writ any persons whose advice it wanted; but this was casual, at the will of the crown, and for its own benefit. The summons was personal, and arose out of the prerogative, which called for service from the subject at such times, and in such manner, as became convenient to the crown, and did not authorize or depend upon any elective delegation by the people. The charter of king John bound him only to summons, by writ under his seal, the archbishops, bishops, abbots, earls, and greater barons, and does not extend to *milites*, or any inferior description of persons. This council consisted as well of clergy as secular persons, who might not happen to be lords or barons of the realm, as, namely, his treasurer, chancellor of the exchequer, judges, justices in eyre, justices assigns, barons of his exchequer, clerks, secretaries of his council, and sometimes his serjeants at law,

The king's council not a parliament.

Who summoned to such council as assistants.

* *Modus tenendi parliamentum*, which seems to be the principal authority relied upon by Elsing, Hackwell, Sadler, Harrington, Dugdale, Lambert, Petyt, lord Coke, and others, to prove a parliament existing in the reign of Edward the Confessor, is now universally admitted a fabrication of no earlier date than the reign of Edw. 3. and probably of as late a date as the 31 H. 6. Pryn. Par. Red. pt. 2. 173. 3 pt. 230. Plea for Lords, p. 164 to 214. Har. Co. Lit. 69. b. n. 2. Selden rejects it as spurious. Seld. Tit. Hon. 2d edit. pt. 2. c. 5. s. 26.

with

with ſuch other officers and perſons whom he choſe to ſummon; and they were to aſſiſt the king and barons. The writs of ſummons to theſe *aſſiſtants* differ from the writs to the peers in this reſpect, that the latter are ſummoned to adviſe, &c. *nobiſcum ac cum "cæteris" proceribus, &c.* whereas in the writs to the former, "*cæteris*," which implies equality, is omitted. Pryn. Parl. Red. pt. 1. 341, & ſeq.

It is not to be ſuppoſed that the plan of repreſentation was ſo matured at this early period, as to exiſt in as perfect a manner as at this day. There are no writs of ſummons extant, except thoſe which iſſued to the cinque ports, until the 22d year of E. 1. which are entered in the clauſe rolls at large; but by the memorandums of the writs iſſued before that period, for electing knights, and entered on the parliament rolls, at a ſmall diſtance from the entry of the writs of ſummons to the ſpiritual and temporal lords, the ſheriffs are only generally directed *to cauſe to come* &c. *duos, milites*, &c. without ſpecifying whether they were in any manner, and how, to be elected. And the ſubſequent part of the entry in the 22 E. 1. relating to citizens, burgeſſes, and barons of the cinque ports, is, "In formâ prædicta "*ſcribitur civibus* Eborum, &c. and *cæteris* "*burgis Angliæ quod mittant duos*, &c. *Item* "*mandatum eſt baronibus*, &c. *de quinq; por-* "*tuum*, &c." without ſpecifying *how* they ſhould proceed; though indeed it is plain, Prynne's Parl. Writ, pt. 2. p. 31.

that the cities, boroughs, and cinque ports, could not concur in doing what was required of them without unanimity or *ſuffrage*, which implies election. We may conjecture, however, from the form of the writs iſſued to elect members for the cinque ports, which are preſerved from the 49 Hen. 3. and which are addreſſed "*baronibus ballivis portus ſui de "Sandivico*, &c." [and not to the conſtable of Dover, or warden of the cinque ports] that the firſt writs for electing citizens and burgeſſes were directed to the cities and boroughs *nominātim*, and not to the ſheriff of the county. And this conjecture ſeems the more probable, that, in the writs of 22 E. 1. directed to the ſheriff to cauſe knights to be elected for the county, no direction is given for electing citizens or burgeſſes. It is not till the following year, that the writ to the ſheriff orders *him* to cauſe to be elected two citizens for every city, and two burgeſſes for every borough, within his county. Carew, overlooking the records of writs iſſued to the cinque ports, inclines to think, that there was no repreſentation of cities and boroughs till the 22 E. 1. but only of the counties by knights of the ſhire. Hume and Brady alſo fix it at this period.

Carew's pref. p. 8. Hume, v. 2. p. 272. Brady on Bor. edit. 1777. p. 68.

Mr. Prynne concludes, with great probability, that the repreſentation of cities and boroughs is coeval with that of the cinque ports, and that the writs have been loſt.

The

The writs therefore of 22 E. 1. are the first authentic documents from whence we learn that the general ſyſtem of repreſentation for counties exiſted as at this time. The writs of that period are as full, as to the eſſential * qualifications of eligibility for county members, as any ſubſequent writ up to this day; for they require that ſuch perſons ſhould be knights of the ſame county for which they are choſen, and that they ſhould come with full power to conſult and conſent for themſelves and the whole commonalty of the county. Much however as yet depended upon the ſheriff, who was not *expreſsly* under any controul as to the manner, time, or place of election, which often gave his arbitrary nomination the force of election.

Repreſentation of counties.

Brad. 125.

It would be both tedious and unneceſſary to obſerve upon the various terms and phraſes of the writ between the 22 E. 1. and this period, otherwiſe than as they tend to illuſtrate ſome point of repreſentation, or ſome material alteration or improvement of it. In ſome writs there are ſpecial cauſes aſſigned for calling a parliament, as in the 25 E. 1. to confirm the great charter: in others, the number of delegates is varied. In the 45 E. 3. the freedom of election is by implication reſtrained both as to the number and the objects of choice; for by the writ of that year, only

Variations in the writ.

Prynne's Par. Writ, pt. 2. p. 31. 35. Ibid. 107.

* Statutes have made alterations which will afterwards be noticed.

half of the number of knights, citizens, and burgeſſes, who had come to parliament the year preceding, are ſummoned. So alſo in the 26 E. 3. but half the number is ſummoned; but in both caſes, it is expreſsly ſtated in the writ to have been done for the benefit of the ſubject: thoſe in the 45 E. 3. expreſſing it to be "*for ſaving labour and expence*," and in 26 E. 3. "*to take as few as poſſible from the harveſt.*" Theſe therefore never were or could be drawn into precedents for narrowing the right of repreſentation. Between the reigns of E. 1. and E. 4. both incluſive, though we find that writs were iſſued to 170 cities, boroughs, and cinque ports, the number of members who were actually returned varied prodigiouſly. Nine of the boroughs to which writs were ſent, took no notice of the precept of the ſheriff, who conſequently returned "*quod ballivi libertatis nullum dederunt reſponſum*," and were never afterwards ſummoned during that period. Twenty of them never returned members more than *once*, and out of the whole number of 170, it appears there were in all ſixty places which did not invariably return members, owing either to the ſheriff not iſſuing his precept to them; a practice which prevailed till the 23 Hen. 6. as appears by the recital of that ſtatute; or from the poverty of the place, or the negligence of the returning officer.

Pryn. Par. Writ, pt. 2. p. 92.

Ibid. pt. 3. p. 223, & ſeq.

In

In the 47 E. 3. a moſt material alteration took place in the writ, by inſerting in it an expreſs prohibition (which is uſually called from the words of the writ, the "*nolumus*" clauſe) againſt chuſing ſheriffs "*aut aliquem alterius conditionis quam ſuperius ſpecificat.*" This alteration aroſe from an act, either of the whole or part of the legiſlature, in the preceding year; it being a matter of doubt and argument to this day, whether the 46 E. 3. was a ſtatute duly enacted by the three eſtates of the realm, the king, lords, and commons; or whether, it not appearing upon the face of the record that the commons had given their aſſent, it could be conſidered as any more than an ordonance, which would not operate to change the law. This ſtatute or ordonance recites the inconveniences which had ariſen from the abſence of the ſheriffs out of their juriſdiction, and from their having returned themſelves knights for the ſame counties of which they were ſheriffs, and then enacts or orders, that "no lawyer in practice, nor ſheriff "for the time he is ſheriff, ſhall be returned "nor accepted *knights of counties.*" The mandatory part, as to lawyers, extended therefore beyond the evil recited; but neither lawyers nor ſheriffs were expreſsly prohibited from being choſen for cities or boroughs, in or out of the counties. This nolumus clauſe is continued the ſame to the 12 R. 2. when the words,

Nolumus clauſe.

46 E. 3.

Note, p. 10.

words, "aut alterius conditionis," are omitted; and though they are inſerted in the next following year, yet, from the end of the 13 R. 2. the nolumus clauſe was never after extended to lawyers either impliedly or expreſsly, except in the 5th year of Hen. 4. when it was revived by the crown to ſecure more effectually the extravagant loan * required of the people by ſhutting out men of learning who might give an oppoſition to the meaſure. But this, like all arbitrary innovations, was immediately cried down by the diſcerning and active ſpirit of the people. The reſtriction attempted in the 5 Hen. 4. was ſo far from being popular, that in 7 Hen. 4. on complaint of the commons, it was enacted, that thenceforth the election ſhould be free and indifferent, or, in the emphatical language of the act, "*non obſtant aucun prier ou "commandement au contrarie.*" And it is beyond all controverſy, that this took away the reſtrictions of the writ introduced in the 5 Hen. 4. though probably the nolumus, as to ſheriffs, was not meant to be affected by it, and has been continued to this day, upon a ground peculiar to itſelf.

2 Mort. Whitlo. on Governm. cap. c. f. 360. 361. Sinclair's Hiſt. Rev. p. 85.

7 H. 4. c. xv.

4 Inſt. 10.

* In the year 1404 it was enacted, by the famous *indoctum parliamentum*, that the king might take one year's profit of all annuities, fees or wages, granted by the crown ſince the reign of E. 3. together with all revenues alienated by the crown, and all patents of penſions or annuities for life, ſince the 40 E. 3. to be examined; and ſuch as were undeſervedly beſtowed to be revoked.

The nolumus clauſe, prohibiting the election of ſheriffs as repreſentatives of the people, has been ever ſince continued as part of the writ, but in terms of greater latitude than thoſe uſed in the ſtatute or ordonance of E. 3. * It ſeems never to have been doubted that a ſheriff is ineligible for *his own county*, though queſtions have ariſen how far he is eligible for another county, or a borough or city within his own, as in the next chapter will be more particularly noticed.

In the 8th year of H. 4. the form of the writ was altered in compliance with, and in conformity to, an act of the legiſlature, which had paſſed the year preceding, to regulate the *mode of election*, but neither enlarged nor narrowed the *right*. The ſtatute (after reciting the undue election of the knights of the counties for parliament, which be ſometimes made of affection of ſheriffs, and otherwiſe againſt the form of the writs directed to the ſheriff, to the great ſlander of the counties and hindrance of the buſineſs of the commonalty, in the ſaid county) preſcribes the mode of election thereafter to take place, and adds, "In the writs "of the parliament to be made hereafter, this "clauſe ſhall be added, "Et electionem tuam "in pleno comitatu tuo factam diſtincte et "aperte ſub ſigillo tuo et ſigillis eorum qui

8 H. 4.

7 H. 4. c. xv.
Pryn. Brev. Parl. Red. from p. 230 to 238.

* For the opinions on the 46 E. 3. ſee all the authorities brought together. Append. to Ruff. Stat. and Dougl. 154. Southampton Ca. 1 Dougl. 419. 448. Abingdon Ca.

"electioni

"electioni illi interfuerint nobis in cancellaria "noſtra ad diem & locum in brevi contentos "certifices indilate." And, for more effectually preventing the ſheriff's partiality, the writ was made to add "freely and indifferently to proceed to the election, and inſert the name of the perſons choſen, "*whether they were preſent or abſent.*" This latter part, it may be preſumed, was added, to leave the electors perfectly free in their choice, and to put it out of the power of the ſheriff, under the pretence of *abſence* of the perſons choſen to return any other whom he might procure to be preſent at the proclamation. The next alteration which took place in the 8th year of H. 6. was of much more eſſential nature than the former. For by an act of parliament of that year, reciting very fully the inconveniences of election by the great outrageous and exceſſive number of people *dwelling* within the county, of which moſt part was of people of ſmall ſubſtance and of *no value*, reſtrains the right of voting to perſons who have frank tenements of clear yearly value of 40 s. after all *repriſes* *. And by the 10 H. 6. the freehold muſt be within the county, the perſons to be elected are alſo directed to be "*commorantes et reſidentes*" within the county; and the ſheriff is empowered to examine the freeholder on oath as to his qualification, and directed not to make

8 H. 6. c. 7.

10 H. 6. c. 2.

* The French word is *repriſes*. Ruffhead has tranſlated it "*charges*."

a bad

a bad return, under the penalty of 100 *l.* to be recovered againſt him before juſtices of aſſize. The writs in 23 H. 6. are formed almoſt literally upon this act, and have continued nearly the ſame ſince that time. It is not clear whether any landed or freehold qualification was requiſite to intitle a perſon to a vote at the county election before this ſtatute. Mr. Prynne is almoſt the only one who holds that the right of voting was in the inhabitants of the county at large (which muſt be underſtood ſubject to the common law diſabilities, of infancy, &c.), without a reference to any landed property whatever. Lord Chief Juſtice Holt, in the caſe of Aſhby and White, ſpeaking upon this ſubject, ſuppoſes the right in freeholders only, though of ever ſo ſmall value. The current of opinions accords with that of Lord Holt.

23 H. 6.

Prynne's Parl. Writ, pt. 3. 187.

1 Salk. 20.

The recital of the writ extends indeed to "*dwellers within the county of no value*;" and the whole "*commonalty*" of the county are thereby required to conſent and empower; and that word ſeems deſcriptive of other perſons beſides *landholders*, becauſe it is applied to the inhabitants of cities and boroughs, who, for the moſt part, muſt be ſuppoſed not landholders, nor ſpoken of as ſuch. But theſe expreſſions muſt be conſtrued according to their ſubject matter. The object of repreſentation was, that the people ſhould impoſe their own taxes. Eſcuage, which, if *uncertain*, was aſſeſſed

assessed in respect of lands held by knight service; and if certain, in respect of lands held by socage; was the principal tax then existing which affected lands. None but those who had free land could therefore be called upon to contribute to it. *Talliage*, though it commenced about the latter end of the reign of H. 3. was upon the towns, and was a tax upon personal property only; and *subsidy*, which was a tax upon income, whether real or personal, and consequently included all persons of any property, whether their income arose from free land or land of base tenure, was the invention of a much more recent period. From these considerations, as well as from the circumstance of the election being directed to be made before the sheriff, and by the persons present in the county court, we cannot but assent to the doctrine generally laid down; and indeed Mr. Prynne himself, in the 4th part of his Parliamentary Writs, seems to have changed his former opinion.

Lytt. Hist. v. 3. p. 256. Sincl. Hist. Rev. p. 34.

Sincl. Hist. Rev. p. 29.

Reg. R. 2.

Pryn. 4th part.

There are some persons who stigmatize this act of H. 6. with the reproach of aristocratic principles, and affect to think that the constitution was wounded by the alteration. If however the recital of the act be true, which has never been denied, that tumult and confusion overbore the voices of the fewer but more substantial voters, who, from the independence of their situation, were more deeply interested in the choice of their representatives;

tives; it may not perhaps be unreaſonable to think that the rights of election were preſerved rather than prejudiced by the alteration. Mr. Juſtice Blackſtone does not ſcruple to attribute the greateſt calamities of Rome, and even the final loſs of its liberty, to the confuſion which aroſe in the public elections, by indulging too large a number of perſons in the participation of the privilege of Roman citizens. The proviſions which have been made by act of parliament ſince this period, for the greater freedom of elections, extending to a more minute regulation of the conduct of the ſheriff, have not been engrafted into the writ, and therefore are beſide the object of this inveſtigation; but will be ſtated at large in the ſubſequent part of this work. Bl. Com. v. 1.

It is evident from the foregoing hiſtory of the writ, that the firſt and great object in direction to the ſheriff was, the repreſentation of the counties; for it gave no directions as to the mode of election in the cities and boroughs. And theſe ſeem, for a long time after parliaments were eſtabliſhed, to have been left altogether at the mercy of the ſheriff, who, though he was directed to ſummon citizens and burgeſſes for all the cities and boroughs within his county, yet was left to his own diſcretion to judge what places were of importance enough to ſend repreſentatives, or were rich enough to pay them. It has been a matter of controverſy amongſt the antiquarians, Repreſentation in cities and boroughs. Bra. 125.

tiquarians, what places came within the deſcription of "*boroughs*," and whether the term "*burgeſſes*" was deſcriptive of *burgage-tenants* ſtrictly ſpeaking; that is, of perſons holding by *burgage-tenure*, according to the definition, of Littleton, or of ſelect corporators or of the general inhabitants of boroughs. The diſcuſſion of theſe queſtions ſeems now a matter of curioſity, rather than uſe, and is not within the ſcope of this treatiſe. Whatever powers and privileges the people might have had under the Saxon conſtitution, we cannot even gueſs at them ſufficiently, to illuſtrate the origin of parliamentary repreſentation, from ſo remote and dark a period. Whether "*boroughs*" were towns enfranchiſed merely by charters of *immunity*, or by charters of *incorporation*, and, if the latter, whether ſuch incorporations were according to the preſent artificial form under which they now exiſt, are inquiries which open a field for learning and ingenuity, but do not help us in the preſent ſtate of things. The ſimplicity and plainneſs of Mr. Prynne's account of the origin of repreſentation, grounded on what *we know*, and collected from records which cannot deceive us, plainly ſhews it not to have ariſen from any charters of the crown conferring the right, nor from any uſage antecedent which had grown into a right, but from the iſſuing of the king's writ to ſuch cities, boroughs, and cinque ports, as were intended to have the privilege; and this extended

Bra. 1 & ſeq. Vid. Har. Co. Lit. 109. p. 2. 1 Salk. 20. 2 Fra. Horſham Ca.

Boroughs.

Pryn. Par. Writs, pt. 3. 223. & ſeq. Ibid. 231. 242. Bra. paſſim.

extended probably to all the cities and towns of any note or conſequence at that time, moſt if not all of which are ſaid to have been within the king's demeſnes, and, as ſuch, liable to *arbitrary* talliage until after the ſtatute *de talliagio non concedendo*. What thoſe particular places were in the interval between the 49 H. 3. and 22 E. 1. from the loſs of the writs to the cities and boroughs during that period, we cannot know with certainty. The writs to the cinque ports only remain preſerved. We have ſeen before how uncertain that right was rendered by the caprice, indolence, and partiality, of the ſheriffs.

Sincl. Hiſt. Rev.

25 E. 3.

I would not be underſtood to mean, that becauſe parliamentary repreſentation, in its preſent form, owes its riſe to the king's writ, that therefore the king's writ may at this day iſſue to any new place; or, that in fact all places which ſend members to parliament at this day, owe their privilege entirely and purely to this ſource. The boroughs of Malton and Allerton had this privilege revived after a diſcontinuance of 340 years. Milborne port, Weobly, Agmondeſham, Wendover, Hartford, Marlow, and other boroughs, owe the renewal of their rights to the houſe of commons, upon whoſe order writs iſſued for their ſending members to parliament after a diſcontinuance of that right near 400 years. Other places, where the right of repreſentation is corporate, owe their privilege to char-

Dec. 11, 1740. Glanv. 87. Will. Not. Parl. v. i. p. 238.

ters granted in or ſince the reign of E. 6. The laſt grant of this kind was to the borough of Newark, by the charter of Car. 2. which, after much diſcuſſion in the houſe upon the legality of the grant, was eſtabliſhed. This caſe, however, would hardly be relied upon to juſtify the exerciſe of ſuch a right at this day. The county and town of Monmouth, and the counties and contributory boroughs within the principality of Wales, the palatinates of Cheſter and Durham, and the two Univerſities, owe their privilege to act of parliament. Monmouth, Wales, and Cheſter, to the 27 and the 34 and 35 H. 8. The palatinate of Durham to the 25 Car. 2. c. 29. The Univerſities to the grant of Ja. 1. Theſe, together with the Scotch members, who have come to parliament, ſince the union of the two kingdoms, have increaſed the number of the repreſentative body from about 300, in the reign of H. 6. to 558. members.

Burgeſſes, what

In the writ.

"Burgeſſes" have been conſidered by ſome as meaning, "*burgage tenants*" only; but as the word "citizens," uſed in the writ, meant "*inhabitants of cities*," ſo probably "*burgeſſes*" meant "*inhabitants of boroughs* *;"

* Borough, imports an ancient town of principal note, which enjoys particular privileges. Lit. ſ. 164. Co. Lit. 109. Bra. Tr. on Boro. 2, 3. Some boroughs are incorporate, ſome not incorporate. Co. Lit. 108. b. Hob. 15. Though by L. Coke, boroughs cannot take privileges unleſs they are incorporate. 12 Co. 121. Brady 1. paſſim.

and

and the legiſlature, in ſeveral inſtances, has conſidered "burgeſſes" and "inhabitants" as ſynonimous. Thus, in the ſtatute of 34 and 35 of H. 8. reciting, that the "inhabitants" of the different boroughs contributed to wages, therefore that the "burgeſſes" thereof ſhould ſend members to parliament; and the ſtatute of Ja. 1. in privileging the univerſities to ſend members to parliament, enables the "*burgeſſes*" thereof, &c. And it is plain, in theſe inſtances, that the word muſt apply to "*inhabitants*" in general, ſubject always to the exceptions of ſex, infancy, &c. which, in all caſes, muſt be tacitly implied.

In Statutes.

Vid. 3 Lud. 282.

In ancient charters alſo, granted either by the crown or other lord, as in the caſe of Poole, Alnwick in Northumberland, Bridgnorth, and a variety of other places, the term *burgeſſes* is general, and means "inhabitants;" and the pivileges granted to "burgeſſes" of herbage, common, &c. is uſed in many places by the inhabitants at large. And by the deciſions on ſuch rights of election, as have depended upon the conſtruction of the word "burgeſſes," except in particular caſes, where the meaning of it is reſtrained by local uſage, or the context of a laſt determination, it is now ſettled to mean "inhabitants." Dr. *Brady* conſiders this conſtruction as grounded on a miſtake, always referring it to a corporate meaning, and as deſcriptive only of the governing part of boroughs. And even the word "commo-

Charters, 2 Dougl 234.

1 Fra. 60. arg.

Deciſions. Abingdon Ca. 8 Jour. p. 42. Alboro. York, Ca. 8 Jour. p. 42. Whitl. Com. v. 1. p. 500. v. 2. p. 95. vid. alſo, 2 Dougl. 233.

nalty" he conſiders in its original meaning as deſcriptive of *corporate* perſons only. Grounding himſelf upon the word "communitas," which he ſays meant a corporation, and was always ſo uſed in the charters which principally in the 12th century were granted to the boroughs and cities. And he even goes ſo far as to aſſert that Selden, ſir R. Cotton, and ſir E. Coke, were miſtaken in the meaning of the word "communitas" and that from that miſtake in a great meaſure, the deciſions extending the right of election, to any other than corporators have ariſen. Be that as it may we have no reaſon to regret it at this day, nor is there any fear leſt the right of election ſhould be narrowed again or in doubtful caſes be reſtricted, by ſo tight an interpretation of that word. The committees have acknowledged it as a maxim, in the adminiſtration of this branch of juſtice, to enlarge the right as far as ſeems conſiſtent with public peace and an independant exerciſe of the franchiſe, that is to houſe holders paying rates. In ſome caſes, partly by the uſage of particular places, partly by poſitive reſolutions of the houſe of commons, it has been modified or reſtrained by ſome qualification annexed to it; ſometimes to mean inhabitants "houſeholders;" ſometimes inhabitants "*paying ſcot and lot*;" the meaning of which laſt expreſſion being very vague, and but little known, has been conſtrued,

Dougl. 3. v. Seaford Ca
4 v. Peterboro. Ca. Note B.
3 v. Dorcheſter Ca. 3. Lud. 125. note G.

ſtrued, "paying to the parochial taxes" under the ſtat. of 43 Eliz. In other inſtances, the word has been left at large, and has been conſtrued to mean "commonalty;" ſo that as the *commonalty* of the counties choſe the knights of the ſhire, ſo the *commonalty* of the cities, boroughs, and cinque ports, choſe their citizens, burgeſſes, and barons, to repreſent them in parliament. In ſome caſes, burgeſſes are a deſcription, of corporators, and extend to non-reſident perſons as well as inhabitants, as will be ſhewn more at large in the third chapter.

Poole Ca. 2 Dougl. 258. 275. Note B. 293. with the caſes collected.

Corporations.

Cardigan Ca. 3 Dougl. 171. Radnor Ca. 1 Dougl. 317.

In the particular inſtances, where burgeſſes mean burgage tenants, the right of voting having been continually confined to the inhabitants of thoſe houſes which were exiſting when the privilege commenced, and to thoſe built upon the old ſcites, hath, in length of time, been conſidered as annexed to the ſoil. At leaſt this ſeems much more probable, than that it ſhould have been a territorial right in its commencement; the writ tending ſtrongly to diſprove that ſuppoſition.

See argument, 1 Fra. 191. Pomfret. Ca. Lit. 162—3. Ld. Raym. 951.

The excluſive juriſdiction uſually enjoyed by cities and boroughs, which were ſummoned to ſend members, gave riſe to the ſheriff's iſſuing his precept to the principal magiſtrate in the borough, for electing citizens and burgeſſes to repreſent ſuch places, inſtead of preſiding there himſelf. The neglect of the ſheriff, however, in not duly ſummon-

ing them having increaſed, called for the interference of the legiſlature, and it was there-
5 R. 2. c. 4. fore provided by the 5 R. 2. c. 4. that in caſe any ſheriff ſhould thenceforth be negligent in making his return of writs of parliament, or leave out of the return any city or borough, which of old time uſed to ſend members to parliament, he ſhould be puniſhed in *manner as was accuſtomed in time paſt.* This operated as little more than an admonition to the ſheriff for want of an expreſs ſanction in
7 H. 4. c. 15. caſe of diſobedience, and was therefore fol-
11 H. 4. c. 1. lowed up at intervals with ſome trifling penal-
23 H. 6. c. 14. ties in a few feeble ſtatutes, till after the Re-
7 & 8 W. 3. c. 7. volution, when the minute and mechanical part of elections (on the obſervance of which, much of the ſpirit and freedom of election depends) was more amply provided for, and rendered the ſheriff, what he was originally only meant to be, a mere miniſter, as to the mode of executing the writ of ſummons. The ſtatutes will be referred to more particularly in the ſubſequent parts of the treatiſe to which they belong.

4 Inſt. 10. There remains nothing to be obſerved, but that this writ is an original writ, which cannot be enlarged, reſtrained, or varied, in any material point, but by act of parliament *. Lord Coke, in his 2 Inſt. calls it a writ in

2 Inſt. 40. Co. Litt. 73. b.

5 R. 2. c. 4. 7 H. 4. c. 15. 23 H. 6. c. 14.

the

the nature of a commiſſion, by which one ſhould be led to imagine, that it is diſtinguiſhable in ſome quality from an original writ. And doubts have been entertained, probably from this expreſſion of Lord Coke, and from this writ not being inſerted in the regiſter of writs, whether ſuch is an original writ or not. But if it be a writ, it muſt be an *original* writ, as iſſuing out of the king's court of chancery, and as contradiſtinguiſhed from *judicial* writs iſſuing by way of proceſs; and it clearly is a writ, though in the nature of a commiſſion. In fact, all the king's writs are in the nature of commiſſions; in as much as they are all written precepts or authorities under the king's ſeal, directed to ſome inferior officer, miniſter, or ſubject, to do ſome act, matter, or thing, ſpecified in ſuch inſtrument. The only diſtinction between this writ and other original writs, is, that the latter iſſue on the complaint and at the requeſt of the ſubject, in order to inſtitute a ſuit, whereas the election writ, for the ſummons of a parliament, iſſued formerly *ex mero motu* of the king, and not on any ſpecial application of the ſubject. And at this day, as far as the choice of the particular time, within the period of three years, is at the king's pleaſure, it may be ſaid to iſſue *ex mero motu*; but on vacancies, during a parliament, it iſſues of neceſſity upon the ſuggeſtion and

The. Dig. lib. 1. c. 1. ſ. 4. Vin. v. 22. p. 543.

warrant of the ſpeaker. Lord Coke's expreſſion, therefore, ſeems to import nothing more than a deſcription equally applicable to all other original writs; or, at moſt, as deſcriptive of a diſtinct ſpecies, which is included within the general term of original writs. In ſpeaking of them in his 1ſt and fourth Inſtitute, he does not add the deſcriptive words uſed in his 2d Inſtitute.

4 Inſt. 73. b.

Having thus ſhortly traced the hiſtory of the writ, and inveſtigated the riſe and progreſs of parliamentary repreſentation, as far as it can be marked out by that line, I ſhall proceed in the following parts of this book to treat of the rights of election, the iſſuing, executing, and returning of the writ, and what are the cauſes of avoiding elections.

CAP. II.

Who are capable of being choſen Members of Parliament for Counties, Cities Counties of themſelves, Cities and Boroughs; and who not.

HAVING, in the preceding chapter, traced the riſe and progreſs of repreſentation from the hiſtory of the writ, the preſent ſubject of enquiry is, who are capable of being elected to that truſt, which is the moſt important, both in its nature and conſequences, that can be conferred by ſubjects upon a fellow citizen, in a free country—a voice in the legiſlation to lay down the rules by which the property, the liberty, and the life of the ſubject is regulated and controlled!

In conſidering who are capable of, and eligible to, this truſt, I ſhall begin by ſhewing who are diſqualified, and on what principles they are ſo. There are ſome diſqualifications which are general, as ariſing from a principle acknowledged by the common law of the land, and are implied, though they are not expreſſed, in the parliamentary writ. There are other diſqualifications which are ſpecial; but which having been introduced, or ariſen from circumſtances ſubſequent to the formation of the parliamentary writ, have not been literally made exceptions within it.

Of

Who are abſolutely diſqualified.

Infants. 7 & 8 W. 3. c. 25.

Of the firſt kind is that diſqualification which is grounded on the ſuppoſed want of diſcretion, or imbecility. Thus infants and women are ineligible. The former were frequently declared ſo by the houſe of commons, and the election avoided, the perſon choſen being under the age of twenty-one. Party or caprice, however, ſometimes adopted a different doctrine, till at length the queſtion was ſettled by act of parliament, by which minors under twenty-one were declared ineligible, and their election void.

Deaf and dumb, ideots, &c. Whitl. Com. v. 1. 461.

Perſons deaf and *dumb* are ſaid to be ineligible; and ideots and madmen ſeem to be clearly ſo, as having no judgment, and therefore incapable of executing the truſt *.

Aliens, ibid. 462.

Aliens alſo, as being ignorant of the laws and cuſtoms of the realm, and unable or unlikely to promote the intereſt of a ſtate to which they are not naturally allied, were always ineligible.

Denizens, 4 Inſt. 47.

So, though they are made denizens, which gives them in moſt other reſpects the rights of ſubjects from the date of the patent of denization; yet ſuch grant does not make them eligible to parliament. Had it been otherwiſe, the crown might at any time have introduced ſtrangers to the laws and con-

Hale on Parl. 116.

* But lunatics in lucid intervals are eligible, for the lunacy may never return; but if it does, and be duly reported to the houſe, there is a precedent for declaring ſuch lunatic's ſeat vacant.

ſtitution;

ſtitution; and the little liberty the ſubject had, might ſoon have been enſlaved. Perſons naturalized by act of parliament, though unfit to be truſted, yet, by the fiction of naturalization, being made completely, in all reſpects, citizens of the ſtate from their birth, were formerly capable of being elected; but the good ſenſe of the parliament, ſoon after the Revolution (the nation having experienced the ill effects of the fiction) enacted a law, by which perſons naturalized were declared ineligible to parliament.

Naturalized perſons. 4 Inſt. 47.

12 & 13 W. 3. c. 2.

Perſons attainted of treaſon or felony, being dead in law, are ineligible.

Whitl. Com. 1 v. 461. 4 Inſt. 47.

Outlawry in civil ſuits does not render the perſons outlawed ineligible. In the famous caſe of ſir Francis Goodwyn, this queſtion came in iſſue. The clerk of the crown had refuſed the return of ſir F. Goodwyn, becauſe he was an outlaw, and the Lord Chancellor iſſued a new writ, upon which ſir J. Forteſcue was elected and returned. The Houſe of Commons, which had groaned under the tyranny of Queen Elizabeth, beginning to feel its conſequence, referred theſe proceedings to a ſpecial committee, and, after due deliberation, rejected the latter, and declared the former duly elected. The privileges, however, of the Commons were as yet too weak to ſtand unſkaken by the over-bearing power of the crown. James the 1ſt, who had particularly proſcribed all outlaws as unfit perſons to be elected,

Outlawry. Introduction to Glanv. 73. 124. Jour. v. 1. p. 149. 23 Mar. 1603.

Parl. Hiſt.

elected, reſented this determination, as injurious to his prerogative. He aſſumed the right of dictating to the commons; who, not being inclined to that paſſive obedience which they had been uſed to ſhew to Elizabeth, and yet unwilling intirely to oppoſe the king, came to a compromiſe. On their part they give up the election of ſir Goodwyn, and the king waived inſiſting on the right of ſir J. Forteſcue, and a new writ iſſued. This ſlender triumph of the crown laſted but a ſhort time. The commons ſoon after, in an eloquent and ſpirited remonſtrance, under the title of an apology, vindicated their own proceedings, and reprobated the king's interference, as an invaſion of their privileges. Sir Bulſtrode Whitlock, indeed, ſpeaks without diſtinction of perſons attainted of treaſon and felony, and *outlaws*, as ineligible; but it muſt be preſumed he means only outlaws in criminal ſuits. The ſame queſtion has occurred both before and ſince the caſe of ſir F. Goodwyn. And in the caſe of Mr. Huddleſton, an outlaw, who was returned one of the knights of the ſhire for Cumberland, it was ſolemnly determined by the committee of privileges, and agreed to by the houſe, upon a view of the precedents which are ſtated in the caſe alluded to, that though outlawed at the time of his election, he was duly elected.—Sir Matthew Hale recognizes the ſame doctrine, without raiſing a doubt upon it.

20 June, 1604. Hale on Parl. p. 206. Petyt's Juſ. Parl. p. 225. Whitl. 1 v. 461.

Jour. Com. v. 1. p. 55.

Dewes Jour. p. 514.

22 Ja. 1.

Glanv. 124.

Hale Parl. 169, 113.

Another

Another general diſqualification is, the being bound to ſerve the ſtate in another capacity, incompatible with the character of repreſentative of the people. Thus peers of parliament, who compoſe a diſtinct and ſeparate part of the conſtitution, were always deemed ineligible, and incapable of ſitting in the houſe of commons. Judges * alſo being ſummoned as aſſiſtants to, and attendants upon, the houſe of lords, to adviſe and aſſiſt them when required, and being alſo one of the executive parts of the conſtitution, are ineligible to the houſe of commons. The maſter of the rolls is not conſidered as a judge, for he does not determine "*ſecundum legem terræ*," though he cannot determine againſt law, but decrees, "*ſecundum æquum et bonum*," according to the rules of equity and good conſcience. He is co-extenſive, though not co-ordinate, with the chancellor, as a judge in equity. Thoſe peculiarities of juriſdiction, which the chancellor has beyond the maſter of the rolls, are by ſpecial commiſſion, or ſign-manual of the crown. There is no doubt, therefore, but that the maſter of the rolls is perfectly eligible; and perhaps

Peers.

Judges. Com. Jour. 9 Nov. 1605. & paſſim.

Maſter of the Rolls.

* Thorp a baron of the exchequer, was ſpeaker to the commons, 31 H. 6. 4. Com. Dig. 285. But any who have judicial places in the court of wards, duchy court, or other courts eccleſiaſtical or civil, are eligible. Bac. Abr. 576.

from

from the greatneſs of his permanent rank †, and independence of his ſituation, he is of all others the moſt ſolemn and confidential repreſentative of the people. In the 4 & 5 W. & M. Cordell, maſter of the rolls, was ſpeaker of the houſe of commons. By Carew it appears that Cromwell, maſter of the rolls, in the 26 of H. 8. was the firſt who was of the houſe; as, until that time, they were eccleſiaſtics, and therefore not eligible. The

Attorney Gen.

Hale Parl. 141.

king's attorney-general, before the Reſtoration, by many reſolutions of the houſe of commons, was declared incapable of ſitting as a member thereof, being ſummoned to attend the houſe of lords, and give his aſſiſtance there. It would be natural to ſuppoſe, that the jealouſy of the commons would have increaſed rather than fallen off, after the Revolution; and that this diſability, which had been grounded on a ſpecial order of the houſe,

4 Inſt. 48.

would have been ſtrictly enforced. There were no leſs than four vacancies declared on this

Vid. Pref. to Flexman's Ind. to the Com. Jour.

Carew, 2d part, 230.

ground, by reſolutions of the houſe, between the years 1620 and 1670; but ſir Heneage Finch, who had ſat ſeveral years as member for the univerſity of Oxford, being made his majeſty's attorney-general, was ſuffered to keep

1 Doug. 454.

his ſeat, and ſince that time to the preſent, no objection has been made to the eligibility of

Sol. General.

the attorney-general. The right of the ſoli-

† Next in rank to the lord chief juſtice of England, and a privy councillor.

citor

citor general, though he alſo is ſummoned to the houſe of lords, has never been negatived, though it has ſometimes formerly been called in queſtion. In the eighth year of Queen Elizabeth, the ſpeaker's place being vacant, it was moved by the comptroller, "That Onſlow, ſolicitor-general, being a member of the commons' houſe, might be reſtored to them, to join with them;" upon which it was anſwered by the lords, by the attorney-general, and other commiſſioners, "that he was no member of the houſe, and alledged his ſolicitorſhip, and his writ of attendance in the upper houſe." Notwithſtanding, he was adjudged a member of the houſe, and afterwards choſen ſpeaker. And in the 23d year of the ſame reign, Popham, ſolicitor-general, was ſent for from the upper houſe, and was made ſpeaker. From theſe precedents it appears, the ſolicitor-general was always conſidered as eligible, though the attorney-general was not.

Hale Parl. 120. Vid. Carew, 130. 2 part. 8 Eliz.

7 Jan. 23 Eliz.

The maſters in chancery, who uſed to be ſummoned by writ, as aſſiſtants to the houſe of lords, ſo late as in lord Coke's time, are not now ſummoned, but *attend* of courſe, and have a place aſſigned to them in the houſe of lords. And this, perhaps, is the meaning of the diſtinction taken in Mr. ſpeaker Onſlow's note given us by Mr. Hatſell, in the ſecond volume of his very uſeful publication, between *aſſiſtants* and *attendants* on the houſe of lords; but

Maſters in Chancery. 4 Inſt. p. 4.

Hatſ. Prec. 2 v. p. 20.

but the origin and office of both ſeem in ſubſtance the ſame. The ſummons was probably diſcontinued about the time of the Revolution. In the interval between the 49 H. 3. and 49 E. 3. there are frequent inſtances of there being no memorandum on the roll of any writs having iſſued to ſummon aſſiſtants, and others, of the number fluctuating from ſo great a number as forty, to ſo low a number as four. Sometimes the aſſiſtants were chiefly of the clerical order, and then the title prefixed to the name of the perſon ſummoned, was "*magiſtro*;" at other times the major number were juſtices, laymen, and but two or three clerks, and frequently ſerjeants at law; latterly, the clerks were wholly omitted, or very rarely inſerted, and that chiefly when they were treaſurers, or temporal officers to the king. From hence Mr. Prynne very juſtly concludes, that if the king could ſummon many or few, and omit ſome or all, they could not be an eſſential part of the houſe of lords. And from theſe conſiderations, it ſeems as clearly to follow, that between the 49 H. 3. and 49 Ed. 3. no commoners were *fixed* counſellors of the crown or houſe of lords; and conſequently the repugnant uſage of ſummoning the ſame perſon to attend his duty in two diſtinct capacities, in the houſe of lords and houſe of commons, at the ſame time, muſt have ariſen from the continuation of a practice on the part of

Pryn. Brev. Par. part 1. 361.

the crown againſt the ſpirit of the parliamentary inſtitution. And if it were neceſſary at any time to ſettle this point, it would probably be put an end to, by the crown agreeing to give up the unlimited power of ſummoning, as aſſiſtants to the houſe of lords, any perſons eligible to the houſe of commons. And, indeed, the preſent ſummons of aſſiſtants by writ, ſeems little more than a matter of form, kept alive for the ſake of ſome official perquiſites. For though writs of ſummons iſſue to the attorney and *ſolicitor-general* (on which there are fees of office amounting in all to about a guinea) no return is ever made; and yet, like maſters, they attend the houſe of lords, and have places aſſigned to them.

Sons of Scotch peers.
Com. Jour. v. 13. p. 27. v. 16. p. 27. Vid. 3 Lud. 315.

The eldeſt ſons of Scotch peers have been, by a great number of reſolutions, formerly declared incapable of ſitting in the houſe of commons; but they are now eligible, except for places in Scotland.

Ib. v. 9. p. 384, v. 9. p. 489. Popiſh Recuſants. 1 W. & M. c. 1. ſ. 6. 7. 1 G. 1. ſtat. 2. c. 13. ſ. 1. 8 G. c. 6. ſ. 1. by Quakers.

Popiſh recuſants, as well before the ſtatute as ſince, were after the Reformation frequently reſolved incapable of a ſeat. And every perſon choſen, before he can take his ſeat as a member of the houſe, muſt take the oaths of ſupremacy, allegiance, and abjuration, and ſubſcribe the articles of the proteſtant religion.

Priſoners for debt.
Jour. Com. v. 8. p. 392. Perſons in execution.

Priſoners in execution for debt have, in one inſtance, been delared ineligible. By

the words of the writ, any perſon may be choſen, whether "preſent or abſent." To authorize the reſolution before alluded to, theſe words muſt have been conſtrued as extending only to abſence of an *indifferent* nature, and not to ſuch a neceſſary and compulſive abſence, as put it out of the power of the repreſentative to execute the truſt repoſed in him. In two later inſtances, however, where this objection was made, the houſe came to no reſolution againſt their eligibility: and ſir M. Hale, in ſpeaking of their privilege from impriſonment, takes no notice of their ineligibility, which he probably would have done had he thought ſuch objection well founded.

22d Mar. 1625.
25th Mar. 1690.
Ha. Par. 116.

A perſon in the Eaſt Indies at the time of election has, in one inſtance, been declared ineligible by a reſolution of the houſe. Certain it is, from frequent inſtances which have happened of late years, that this reſolution has never been extended to vacate the ſeat of a perſon going to the Eaſt Indies after his election. And the reſolution alluded to, ſeems againſt the letter of the writ, and probably before a committee, would, at this day, have but little weight. In the Briſtol caſe, the abſence of Mr. Cruger, in America, at the election, was not objected to his eligibility. Ambaſſadors, miniſters, officers in the army or navy, or others, being abroad at the time of election, upon national affairs, are clearly eligible.

13 Jour. p. 335. 358.
Perſons abroad.

Ambaſſadors.
Par. Deb. 1620.
v. 1. p. 49.
Officers.
Hale, Parl. 116.

gible. Upon a contrary doctrine, the moſt meritorious might be excluded from that truſt, which of all others they would be the moſt able to perform, and might beſt deſerve.

There are ſeveral reſolutions in the Journals of the houſe of commons, by which clergy in holy orders are declared incapable of ſitting there as members. The general reaſon given is, that they ſit or are capable of ſitting in convocation. The continual attendance upon parliament, during a ſeſſion, which is a matter of duty, and cannot be diſpenſed with, but by ſpecial licence of the houſe, and an entry thereof in the book of the clerk, ſeems perfectly inconſiſtent with that ſolemn truſt repoſed in them, the cure of ſouls, and would neceſſarily involve them in the breach of thoſe laws which require a conſtant reſidence and hoſpitality upon their livings. The moderation and prudence of the clergy has afforded but very rare inſtances of conſidering the queſtion. Lately, indeed, it has been tried upon the right of a deacon to be elected, and though lord Coke has laid it down, and there is exiſting a reſolution of the houſe, that a clergyman of the "loweſt order" is ineligible, the committee adjudged ſuch deacon to have been duly elected. But if, during the actual exiſtence of convocation, and the exerciſe of its powers, no one, *even the loweſt in holy orders*,

Clergy.
Jour. Com.
3d Octob. 1553.
3d Feb. 1620.
17th Jan. 1661.
4 Inſt. 47.
Vid. Heyw. on Co. Elections 73.

2 Lud. 269.
Newport Ca.
Heyw. 73.
4 Com. Dig. 285.

could have a ſeat in the houſe of commons, as lord Coke tells us; upon what ground of argument can the queſtion be determined differently at this day? The form of a convocation ſtill exiſts, it has never been aboliſhed, and is ſtill ſummonable by the king's writ. When the clergy was firſt taxed by a general aſſeſſment act in the year 1664, the great object of convocation, which was to tax themſelves, ceaſed. From that period, or ſhortly after, they were juſtly allowed the privilege of voting for their church benefices, in the election of thoſe repreſentatives who were to tax them. Thus what they loſt in one way, they gained in another. But if their power of convocation was confined to canonical matters, and taxing the clergy, I do not ſee how the abolition or ſuſpenſion of convocation can give the clergy a right to a more extenſive legiſlation than they had before; and they ſtill continue to tax themſelves by repreſentation, like the reſt of the people. If, indeed, the ſole buſineſs of the houſe of commons was confined to taxation; and it had no legiſlative authority, but in that particular, the argument in favour of the clergy would ſtand on a ſtronger foundation.

In the writs of ſummons to the biſhops, they were directed to iſſue their writs to the arch-deacon and dean, to attend *perſonally*, and to the chapter to ſend two proxies, who were called *procuratores cleri*. And they were

to

to come as *ſpiritual aſſiſtants*. Many had a notion, that as the clergy had no votes at elections of knights, citizens, and burgeſſes, they had a voice in parliament. But lord Coke takes notice of this as a great miſtake, and ſays, "*Queſtionleſs they never had.*" This being long before their voting for their benefices, makes the doctrine at this day ſtronger againſt them. And by Carew it appears, that after a ſearch of precedents, into the right of the attorney-general to ſit as a member, it was reported to the houſe that Cromwell was the firſt maſter of the rolls who ſat as a member of the houſe of commons, in the 26th of H. 8. for that, till then, the maſters of the rolls were *in holy orders* and *ſo could not be of this houſe*. Mr. *Woodeſon*, in his admirable work, which the practiſer may conſult with utility as well as the ſtudent, ſhews that there is no diſtinction in principle between prieſt and deacon, as to the matter in queſtion.

4 Inſt. p. 4.

Carew 130. part 2d. 2 col.

Woodeſ. Lect. v. 1. p. 47.

There is another general diſqualification for a limited time, as it creates an ineligibility either to county, city, or borough, during the time it laſts, which cannot be beyond the period of one parliament; that is, where a perſon is declared by a ſolemn reſolution of the houſe of commons to be incapable of ſitting as a member thereof during that parliament. The exerciſe of this power of removing a member by a vote of the houſe of commons ſeems ground-

Incapacitation by houſe of commons.

ed on continued uſage, which is called the law of parliament. Such a power ſeems naturally and even neceſſarily to belong to all aggregate bodies. They cannot exiſt honourably, and fulfil the object of their creation without it. The uſe, however, of this power ſhould be regulated by the ſtricteſt juſtice; for, if once the violence of party is let looſe upon an object, and a repreſentative of the people is diſcharged of the truſt conferred upon him by his conſtituents, without good cauſe, the repreſentative body aſſumes a power of control over the conſtituent body inconſiſtent with the freedom of election. Any crime which renders a man infamous has been made a ground, ſometimes, of actual and expreſs expulſion;—ſometimes (which amounts to the ſame, cloathed only in gentler terms) of being diſcharged from ſitting as a member of that houſe.

Com. Journ. v. 13. p. 251. 12 W. 3. 17. p. 128. 12 Ann, 32. p. 387. 9 G. 3. v. 11. p. 632.

Thus bribery, before as well as ſince the ſtatute of King William, has been held a ſufficient reaſon for expulſion. So a breach of truſt in an office of the ſtate, or corruption in that office, has been reſolved a good cauſe. And a conviction for obſcene and blaſphemous libel, followed by a judgment of the King's Bench, of fine and impriſonment, and actual execution under it, have been determined ſufficient to call forth this mark of cenſure from the houſe. But it ſeems neceſſary for the houſe to follow up its reſolution of expulſion, by an

11 Journ 632. Expulſion, and declaration of incapacity to ſit. 17 Journ. p. 128.

actual

actual declaration of the party expelled being incapable of ſitting as a member, to make him actually ineligible. For whatever crime a member be removed, even in the caſe of a felon convict, the new writ cannot iſſue till after the judgment of removal is pronounced by the houſe. In the inſtances alluded to above, the houſe did proceed to ſuch declaration, and in conſequence thereof, declared the re-election of the ſame perſon, in the two former inſtances, void. In the laſt inſtance, the expulſion was not followed up by a declaration of incapacity immediately, and the party expelled being re-elected and returned again, his election was reſolved to be void, and he was then declared *incapable of being elected a member to ſerve in that parliament*. And having again become a candidate and being re-elected and returned, his election was again held void, and the votes, being given with *notice* of the *declation* of incapacity, were deemed to be thrown away, and the candidate with a ſmaller number of votes was declared duly elected. This reſolution however, was afterwards, at a conſiderable interval, expunged by order of another reſolution of the houſe. The precedent, therefore, is not only done away, but reprobated. If, however, the queſtion were to ariſe upon the caſe of a felon convict, or of one convicted of perjury, or upon a caſe of acknowledged infamy, diveſted of all party conſider-

Hale Parl. 113.

ations, whether a perſon expelled for ſuch offence, and declared incapable of ſitting in that parliament, could be re-elected, it is probable the houſe of commons would feel conſiderable reluctance to ſubmit in this reſpect to the obſtinacy of the place repreſented; for the power of expulſion ſeems to involve in it ſuch a power of incapacitation. Otherwiſe, if a perſon ſo expelled and declared ineligible, could be re-elected, and muſt be again re-expelled, and ſo *toties quoties*, as long as the infamy and ſentence of incapacitation continued, the place for which ſuch perſon ſhould be re-elected, would remain unrepreſented, and the repreſentative body, in this ſtruggle, would continue imperfect, to the prejudice of the rights of the people at large, who are intereſted in having the popular aſſembly of the nation complete, and to the delay and hindrance of public affairs.

Members who have taken their ſeats.

Any perſon already a member of parliament, after he is returned, is ineligible for any other place, unleſs he vacates his former ſeat; for it would be *actum agere*, and the due number of the repreſentative body would be wanting. But perſons elected, before they are returned, are eligible, and frequently are elected for other places alſo, and *cannot* make their election till fourteen days after their return. It has been held alſo, that a petitioner, depending his petition in parliament, may be choſen for another place.

Petitioner, 5 Mar. 1727.

The

Placemen.

The acceptance of almoſt any public office or emolument under government, by various acts of parliament ſince the Revolution, has, in ſome inſtances, rendered the acceptor thereof ineligible; and, in others, has vacated his ſeat. Thus, by the 12 & 13 W. 3. it is enacted that no member of the houſe of commons ſhould, after that parliament, be capable of executing by himſelf, or deputy, any office or place concerning the farming, collecting, or managing of the cuſtoms: And if he did, ſuch perſon is thereby declared incapable of ſitting *or voting* as a member of the houſe in ſuch parliament. And by the 6th of Anne, no perſon who ſhall in his own name, or in the name of any other, have, &c. any *new office*, or place of profit under the crown (created ſince the 25 Oct. 1705), nor any perſon who is a commiſſioner of prizes; ſecretary or receiver of the prizes; nor any comptroller of the accounts of the army; nor any commiſſioner of tranſports; nor any commiſſioner of the ſick and wounded; nor any agent for any regiment; nor commiſſioner for wine licences; nor any governor or deputy governor of the plantations; nor commiſſioner of the navy employed in the out-ports; nor penſioner of the crown during pleaſure (which by 1 G. 1. c. 56. is extended to a penſioner for years certain); ſhall be capable of *being elected*, or of ſitting or voting as a member of parliament; and ſuch election is declared void to all intents and purpoſes;

5 W. & M. c. 7. ſ. 57. 12 & 13 W. 3. c. 10.

6 An. c. 7. ſ. 25, 26.

Perſons whoſe ſeats are avoided but are re-eligible.

purpoſes; and the perſon ſo ſitting or voting, ſhall forfeit 500*l.* But that act is declared not to extend to any officers in the navy or army: And it is alſo provided, that if any perſon, being choſen a member, ſhall accept of any office of profit from the crown, during the time of his continuing member, whereby his ſeat becomes void, and a new writ iſſues, that ſuch perſon ſhall be capable of *being again elected.*

8. 26.

7 G. 2. c. 56. By 7 G. 2. no judge of the court of ſeſſions, or juſticiary, or baron of the court of exchequer in Scotland, ſhall be capable of *being elected* or of ſitting and voting as a member.

15 G. 2. c. 22. Perſons incapable of *being elected*, or ſitting. And by the 15 G. 2. no perſon who ſhall be commiſſioner of the revenue in Ireland; or commiſſioner of the navy or victualling offices; nor any deputies or clerks in any of the ſaid offices, or in any of the ſeveral offices of lord high treaſurer; or the commiſſioners of the treaſury; or chancellor of the exchequer; or of the lord high admiral; or the commiſſioners of the admiralty; or of the paymaſters of the army, or of the navy; or of his majeſty's principal ſecretaries of ſtate; or of the commiſſioners of the ſalt; or of the commiſſioners of the ſtamps; or of the commiſſioners of appeals; or of the commiſſioners of wine licences; or of the commiſſioners of hackney coaches; or of the commiſſioners of hawkers and pedlars; nor any perſon having any office, civil or military, within the iſland

of

of Minorca, or in Gibraltar, other than officers having commiſſions in any regiment there only, ſhall be capable of *being elected*, or of ſitting or voting as a member of the houſe of commons. And ſuch election and return are thereby declared to be void; and any ſuch perſon preſuming to ſit and vote, is ſubjected to a forfeiture of twenty pounds a day. But this act is declared not to extend to exclude the treaſurer or comptroller of the navy, the ſecretaries of the treaſury, the ſecretary to the chancellor of exchequer, or ſecretaries of the admiralty, the under ſecretary to any of his majeſty's principal ſecretaries of ſtate, or the deputy paymaſter of the army; or to exclude any perſon having or holding any office or employment for life, or for ſo long as he ſhall behave himſelf well in office. Mr. J. Blackſtone, in taking notice of theſe incapacities, has blended the acts together, and has drawn a general concluſion, that the perſons enumerated are incapable of *being elected or ſitting as members*. This miſtake will be eaſily perceived by an attentive peruſal of the ſtatutes, and has not eſcaped the accuracy of Mr. Douglas. The caſe of Sir Richard Allen ſeems to juſtify this obſervation. Sir Richard Allen was collector for life, by patent, of the great and petty cuſtoms in the port of Yarmouth, at the time of *election*; he ſurrendered on the 7th of February; the ſurrender was enrolled on the 8th, and he

Sect. 2.

Sect. 3. Exceptions.

1 Dougl. 143.

he took his ſeat on the 9th, having firſt ſubmitted his caſe to the houſe, who reſolved he ſhould be admitted to take his ſeat, after having debated upon the 90th ſection of the 12 & 13 W. 3. c. 10. on which the queſtion aroſe. The words are, "*If any member of the houſe, &c. ſhall, during the time of his being a member of parliament, by himſelf, or his deputy, &c. take or enjoy any place, &c. touching the farming, managing, or collecting of the cuſtoms, &c. in ſuch parliament.*" The clauſe clearly refers only to a complete member who has actually taken his ſeat, and has the power of acting or voting; but before the perſon choſen has taken his ſeat according to the forms of the houſe (eſpecially ſince the oaths required to be taken,) he cannot exerciſe his privilege, and if he diveſts himſelf of his office before the completion of his title, he ſeems not within the meaning of the act, which does not declare him *ineligible.*

Partial diſqualifications.

Theſe are general diſqualifications, which make the perſon who labours under them ineligible either for counties, cities, or boroughs. There are other diſqualifications of a partial nature, which render the party ineligible for one repreſentation and not for another. Thus ſome perſons are qualified for boroughs, who are not ſo for counties; others are qualified for ſome boroughs or counties, and not for others; and theſe partial or particular qualifications, or diſqualifications, ariſe from civil policy,

policy, which has, from time to time, interpoſed for the better regulation of parliamentary repreſentation. Before I proceed to theſe particular diſqualifications, it may not be improper to add, that if a perſon who is clearly ineligible becomes a candidate, and notice is given, and ſufficient proof is ſhewn or tendered to the voters, of the facts or circumſtances which render ſuch candidate ineligible, the voices given to him are thrown away, and the candidate with the next greateſt number of votes is duly elected.

Kirkcudbright Ca. Feb. 1782. 38. Journ. 15. 245. 415. 689. Fife Ca. 9. Dec. 1779. 37 Journ. 500, 560, 561.

It was long unſettled how far a ſheriff was or was not capable of being elected, and for what place. Sir E. Coke, when he was ſheriff for the county of Bucks, was choſen member for the county of Norfolk, and actually took his ſeat. He was at that time under the perſecution of the court, and notwithſtanding the interference of Car. 1. the committee of privileges and elections, to whom his caſe was referred, made no report againſt his eligibility; and afterwards, in a ſuit in chancery, he was allowed the privilege of parliament. This is laid down by himſelf, in his 4th Inſtitute, as an adjudication of his right; and Mr. Juſtice Blackſtone, in his Commentary, conſiders the point as ſettled. In the firſt caſe on that ſubject, which has occurred ſince the eſtabliſhment of the new judicature, it has been determined, that a ſheriff is ineligible to a borough within the county of which he is

Sheriffs.

Bl. Com. v. 1. p. 175. Sheriffs.

is ſheriff at the time of election; and, in a ſubſequent caſe, that the ſheriff of a county is eligible for a town, which is a county of itſelf, though lying within the diſtrict of the county whereof he is ſheriff. The former caſe muſt be preſumed to have been decided upon the impolicy and inconvenience of ſuffering a perſon to return himſelf, and of leaving it in his power to judge of the legality of votes which are given to himſelf: a contrary doctrine would make him *actor and judex* in the ſame cauſe. But that reaſon does not hold in the latter caſe, becauſe the diſtrict is out of his juriſdiction, and he himſelf has nothing to do in the execution of the writ. Thus the negative words of the writ are conſtrued not to make a general, but only a local diſability. The words of the writ are, "*Wil-*
"*ling neverthelefs that neither you, nor any other*
"*ſheriff of this our ſaid kingdom, be in any wiſe*
"*elected.*" The ſtatute or ordonance of 46 E. 3. upon which this change of the writ was founded, being reſtrictive only of the choice of ſheriffs as *knights of counties* (as appears in the foregoing chapter,) ſeems to have been very properly uſed as a key to interpret the writ. The writ however cannot alter the law, and therefore had the clauſe expreſsly excluded ſheriffs from being elected at all, it ought to be diſregarded. The evil recited by 46 E. 3. is twofold; firſt, that the ſheriff is prevented from continual reſidence in his county

Dougl. 1. vid. Abingdon Ca.

4 Dougl. Southampton Ca.

county (which by the 3 G. 1. c. 15. is impliedly at leaſt rendered unneceſſary), and ſecondly, the abuſe of his power by returning himſelf. But the remedy would be carried beyond the evil, and conſequently beyond the intention of the law, if the words ſhould be conſtrued to diſqualify him from being elected for any place out of that juriſdiction to which his office is confined. Thoſe, who wiſh to ſee the authorities and arguments on the *nolumus* clauſe brought together, will find them ſtated at large in Mr. Douglas's Reports of the Abingdon and Southampton Caſes. Upon the ſame principles, returning officers, of whatever deſcription, are ineligible univerſally for the city, borough, or cinque port, over which they preſide at the time of election. And for this doctrine, though the writ does not extend expreſsly to it, there is a ſolemn reſolution of the houſe, which has never been overturned.

Mayors.

Com. Journ. 2 June 1685.

The degree and quality of the perſon eligible for a county, is, by act of parliament, ſo far fixed, that he muſt be above the degree of a "vadlet," which means *yeoman*, and ought to be a knight or notable, ſquire or gentleman, capable of being made a knight. The words of the writ ſtill continue to be "*knights girt with ſwords.*" They were introduced into it in the 13th year of E. 3. and have been conſtrued to mean actual knights by *order*, as well as knights by *tenure*.

What rank diſqualifies for counties. 23 H 6. c. 15. ſ. 3.

Pryn. Parl. Writ. pt. 2. p. 90.

The expreſſion is continued to this day, though it ſeems never to have been of any binding force, and is not mentioned in 23 H. 6. c. 15. The clauſe, although of no ſubſtantial uſe, has obtained reverence from time, and anſwers at leaſt the purpoſe of impreſſing upon the electors an idea of the antiquity of their privilege.

Qualifications for counties.

But as every one, who had a knight's fee (which was but 40 l. a year in free land), was before the abolition of the feudal tenures, capable of and liable to be made a knight, it became neceſſary to enlarge the qualification as wealth increaſed, when the value of a man's property was once adverted to as a criterion to direct the choice; and accordingly it is enacted, 9 An. c. 5. that no perſon ſhall be capable to ſit or vote as a member of the houſe of commons, for any county, city, or borough, within England or Wales, &c. who ſhall not have an eſtate, freehold or copyhold, for his own life, or for ſome greater eſtate, either in law or equity, over and above what will ſatisfy and clear all incumbrances that may affect the ſame, within England or Wales, or the town of Berwick upon Tweed, of the annual value of 600 l. for every knight of a ſhire above repriſes, and of 300 l. above repriſes for any other member. A mortgage is no qualification until after the mortgagee has been 7 years in poſſeſſion. And if any perſon, who ſhall be elected or returned, ſhall not at the time of ſuch election and return

f. 5.

turn be ſeiſed of, or intitled to, ſuch eſtate as before mentioned, ſuch election and return ſhall be void; and by the ſame act, any perſon who ſhall appear as a candidate, or ſhall be propoſed to be elected, upon reaſonable requeſt to him to be made at ſuch election, or before the day prefixed in the writ of ſummons for meeting of parliament, by any candidate, or any two or more perſons having right to vote at ſuch election, ſhall ſwear to his qualification in manner thereby preſcribed, (for which oath ſee the Appendix), which oath of qualification is alſo thereby directed to be returned into the chancery or king's bench, within three months after the election, under a penalty upon the ſheriff of one hundred pounds; one half to the informer, and one half to the poor: and, if the candidate ſo required refuſes to take the oath at the time of election, or before the day in the writ mentioned for the meeting of parliament, his election is void. This act, however, excepts the eldeſt ſon and heir apparent of a peer, or of a perſon qualified to be a knight of the ſhire, and the burgeſſes choſen for the two Univerſities; and the members for *Scotland*, and, by a ſubſequent act of parliament, every perſon, choſen to ſerve as a member of parliament, muſt ſwear to his qualification, according to the terms preſcribed in the latter act, before he ſits at a debate of the houſe, or votes, and ſhall give in a roll or ſchedule

9 An. c. 5. ſ. 5. Swearing to qualification, *if required*.

Qualification to be returned.

33 G. 2, c. 20.

Giving in a qualification and ſwearing, though not required.

containing the particulars of his qualification, of what the ſame conſiſts and where ſituate, or his election ſhall be declared void and a new writ ſhall iſſue. Beſides theſe ſtatutes, there is a reſolution of the houſe of commons of the year 1713, which was made a ſtanding order on the 21ſt of November 1717 (now in force), that if the qualification of a perſon returned was expreſsly objected to by a petitioner againſt the election, he ſhall, *within fifteen days after*, give in a rental to the clerk of the houſe of commons; and the petitioner ſhall do the ſame, if the ſitting member queſtions his qualification, and if the ſitting member does not give in his qualification, his election is void. The ſitting member's election was declared void in the Colcheſter caſe for not complying with this order; and the ſtatement in the petition, that the ſitting member was a bankrupt, and had no eſtate and effects at *the time of election*, was held an *expreſs* objection to the qualification, within the meaning of the ſtanding order, and bound the party to have given in a *rental*. And the ſame reſolution and order is held to extend to caſes where the *electors only* petition. But where the petitioner was abroad at the time of election, and of the hearing the petition, the committee held it no objection that his qualification, though duly demanded by the ſitting member, was not given in.

18 Journ. 629.

On objection, a rental to be given in.

Colcheſter Ca. Lud. 416.

3 Lud. 167.

In

In the Briſtol caſe, objection was taken, that the qualification of Mr. Cruger, who was elected, was executed during the poll; but the objection was over-ruled. The earlieſt period at which the ſtatute of 9 Anne requires the party choſen to be duly qualified, is at the *election*; but there being no election till the poll is finiſhed (as will be ſhewn in a ſubſequent chapter), the deciſion ſeems clearly right, ſo far as depends upon the *time*.

18 Mar. 1786.

Qualification any time before the election is finiſhed.

However the qualification itſelf is now, or may be, in a great meaſure, evaded; for in the ſame caſe, though the conveyance was made *during the poll* to a truſtee (Cruger himſelf being in America at the time) in conſideration of 10,000 l. not a farthing of which was paid at or after the time of conveyance, but was ſecured only by a ſubſequent mortgage of the eſtate pretended to be ſold, and though it appeared to have been the ſame eſtate formerly conveyed to Mr. Cruger to give him a qualification on a former election, yet the committee muſt, by confirming the election, have determined this a ſufficient qualification.

Who qualified for cities and boroughs.

No particular rank or quality is neceſſary for citizens and burgeſſes; but they are required, by the ſtatute of Anne before mentioned, to have 300 l. clear (as in caſe of knights) in freehold, or copyhold meſſuages, lands, or tenements; and the ſtatute of G. 2.

and alſo the reſolution of the houſe before mentioned, extends to them the ſame as to county members. Integrity and abilities are pointed out as the qualities to recommend citizens and burgeſſes to the choice of their electors, the words being in moſt of the old writs "*de diſcretioribus probioribus & legalioribus.*" It is not neceſſary that citizens and burgeſſes ſhould be reſiant in their reſpective cities and boroughs, or that their qualification ſhould be local. The acts of parliament requiring reſiancy were never attended to, although they contained ſtrong words; Lord Coke holds them to be directory only. The reſolutions of the houſe had, in various inſtances, diſpenſed with reſiancy, notwithſtanding theſe ſtatutes: it has lately been thought more decent to repeal them by act of parliament. In the Briſtol caſe it was ſettled, and upon very old authorities, that a perſon is eligible, though he does not ſtand until a ſecond or ſubſequent day of the poll. Formerly, it was very common to elect the two members at conſiderable intervals, and it was eſteemed an honour to be firſt choſen.

Reſiancy.

1 H 5. c. 1.

14 G. 3.

1 Dougl. 286.
Ibid. 91.
Lud. 294.
Glanv. 26. 74.
25. 7.
Vid. Leiceſterſhire Ca. 8 Feb. 1705-6.
Beeralſton Ca. 28 Apr. 1640.

*All perſons, free from diſqualification, are eligible againſt their inclination; and, after their election, cannot renounce their return, but muſt ſerve in the truſt conferred upon

Sir Humph. Hook's Caſe. Vid. 1 Dougl. 28:.

* There is no other way of avoiding the ſeat, but not taking the oaths, or neglecting to give in a qualification, purſuant to the ſtatute of G. 2. unleſs by getting ſome office, which vacates the ſeat.

them,

them, it being a truſt not for their own, but for the public benefit; and for the ſame reaſon it is, that the king cannot grant to a ſubject an exemption from ſerving as repreſentative of the people.

Glanv. 102. 4 Inſt. 49.

In the infant ſtate of repreſentation indeed, patents of exemption were ſometimes granted, as well to individuals as to boroughs. The effects of the latter ſtill operate on many places; it is our happineſs, however, no longer to conſider ſuch grant as the releaſe of an obligation, but as the privation of a right.

Prynne's Animadv. on 4 Inſt. p. 31. Ruffh. Pref. to Stat.

CAP. III.

Who are capable of voting, or not, at Elections for Counties, Cities or Towns Counties of themſelves, Boroughs, and Cinque Ports.

THE right of voting at elections for members of parliament conſtitutes the much admired and envied liberty of an Engliſhman. Women, infants, ideots, and madmen are abſolutely diſqualified from the exerciſe of this privilege. Aliens alſo can have no vote. Denizens, from the time of denization, and naturalized perſons acquire this right, being then king's ſubjects, and, after their adoption ſuppoſed as much intereſted in the choice of repreſentatives, by whom their lives and property are to be bound, as the natives themſelves. The legiſlature, ſoon after the Revolution, however, became too jealous to ſuffer them to retain the capacity of becoming members of parliament; ſo that though they may chuſe, they cannot be choſen, repreſentatives of the people. Perſons convicted of bribery, perjury, or ſubornation of perjury, being thereby rendered infamous, are deemed unfit to be truſted with this privilege, and have no votes, however in other reſpects qualified; and no one who ſhall refuſe to take the oaths of allegiance and ſupremacy,

7 & 8 W. 3. c. 25. ſ. 8. General diſqualifications.

2 G. 2. c. 24. ſ. 6, 7.

ſupremacy, or abjuration, or, in caſe he be a * *quaker* ſhall refuſe to affirm the ſame, is capable of voting at any election.

6 An. c. 23. ſ. 13. For theſe oaths ſee the Appendix.

Perſons attainted have no right to vote, for they loſe all their civil rights.

Heyw. 221. Sudbury Ca. 5 T. Rep. 117.

A felon convict is incapable of voting. And the ſeſſions book was held evidence of his being a felon convict. Ib. ſed. qu. as to the latter point.

Phil. 170. Sudbury Caſe.

Excommunication as it ſhould ſeem, is no prejudice to the right of voting, eſpecially where the right is annexed to real property, the objection has been taken, but ſeems never to have been decided upon.

Wendover Ca. 13 Journ. p 42. Vid. Heywood 220.

A papiſt may vote, if he took all the oaths tendered, though the oath of abjuration was not tendered or taken at the election.

2 Lud. 567.

And by the 22 G. 3. no commiſſioner, *collector*, ſupervisor, gauger, or other officer or perſon whatſoever, concerned or employed in the charging, collecting, levying, or managing the duties of *exciſe*, or any branch or part thereof; nor any commiſſioner, collector, comptroller, ſearcher, or other officer or perſon whatſoever, concerned or employed in the charging, collecting, levying, or managing the *cuſtoms*, or any branch or part thereof; nor any commiſſioner, officer, or other perſon, concerned or employed in collecting, receiving, or managing any of the

22 G. 3. c. 41. Perſons diſabled from voting. Vid. 20 G. 2. c. 3. ſ. 6, 7. 9. 30. 43. as to the mode of appointing the different collectors, &c. of various taxes.

* Vid. Heyw. 210, & ſeq. deciſions againſt the right of quakers to vote.

duties on *ſtamped vellum*, parchment, and paper; nor any perſon appointed *by the commiſſioners* for *diſtributing of ſtamps*; nor any commiſſioner, officer, or other perſon employed in collecting, levying, or managing any of the duties on ſalt; nor any ſurveyor, collector, comptroller, inſpector, officer, or other perſon, employed in collecting, managing, or receiving the *dutes on windows* or houſes; nor any poſtmaſter, poſtmaſter general, or his or their deputy or deputies, or any perſon employed by or under him or them in receiving, collecting, or managing the *revenue of the poſt-office*, or any part thereof; nor any captain, maſter, or mate of any ſhip, packet, or other veſſel, employed by or under the poſtmaſter or poſt-maſters general *in conveying the mail to and from foreign parts*, ſhall be capable of giving his vote for the election of any knight of the ſhire, commiſſioner, citizen, burgeſs, or baron, to ſerve in parliament. And if any ſuch perſon, either during the time of holding *or executing* ſuch office, or within twelve calendar months, after he has ceaſed to hold or execute ſuch office, ſhall preſume to vote, the vote is void, and the perſon offending ſhall forfeit 100l. one moiety to go to the informer, the other moiety to the treaſurer of the county; the penalty to be ſued within twelve months after ſuch forfeiture incurred. This act is declared not to extend to *commiſ-*

Except managers of parliamentary taxes.

ſioners

ſioners of land-tax, or any perſon acting under their appointment in collecting or managing the land-tax; or to any other perſon concerned in collecting or managing any other rates or duties granted, or to be granted or impoſed by authority of parliament; or to any perſon holding an office, or uſually granted to be held, by letters patent, for any eſtate of inheritance, or freehold.

In the Bedfordſhire Ca. This act was ſo conſtrued, as not to extend to any officers concerned in the revenue, who were appointed by the *commiſſioners of the land-tax*, though paid a per centage out of the revenue. And that whether they appointed as commiſſioners of *land-tax*, or in any other character conferred upon them by this act, viz. in the regulation of the windows, houſe taxes, &c. which they are appointed to regulate. Therefore 2 Lud.

Collector of the window tax being appointed by them under this act, and not by government, were allowed to vote, though paid by per centage out of the revenue. Bedf. Ca. on Barringer's vote, and S. P. in Bucks Ca. Ib. 552.

Sub-diſtributor of ſtamps being appointed by *diſtributor*, and not by government, may vote. Ib. 553. Bedford Ca. S. P. 1 Fra. 164.

So one occaſionally appointed by the collector of exciſe, to collect, at wages paid by the collector, his vote was good. 4 Fra. 165.

Huſband

4 Fra. 558. Bedf. Hempſtead's vote.

Huſband of poſtmiſtreſs, though ſhe was appointed before marriage, his vote is bad, he has profits, and under influence.

Ib. 561. Bedf. Burr's Ca.

One kept the houſe where the poſt-office was, and did the buſineſs, and took the profit, (but the landlord of the houſe, who was a brewer) was the *real* poſt-maſter, and reſponſible to government, the *real* poſt-maſter held to have no vote.

2 Fra. 454. Cirenceſter caſe.

Guard of a mail coach, paid by comptroller general of the poſt-office, not diſqualified on that account.

The words of the parliamentary writ are not explanatory of the right of voting. They are "*Freely and indifferently to thoſe who at ſuch proclamation ſhall be preſent, according to the form of the ſtatutes in that caſe made and provided, You cauſe to be elected.*" The ſtatutes therefore, and the cuſtoms of particular places, either immemorially uſed, or under the king's charter, are the ſources from whence we are to derive our information on this head. And theſe different cuſtoms, having been frequently ſubjects of parliamentary adjudication, have been declared, from time to time, by reſolutions of the houſe of commons, and, ſince the tenth year of the preſent reign, by deciſions of ſelect committees. The laſt reſolution of the houſe itſelf upon the right of voting has, by act of parliament, been made concluſive evidence of that right; but the reſolutions of the commit-

2 G. 2. c. 24. ſ. 4. See the Introduction.

tees

tees under Mr. Grenville's act, were precedents for future deciſions no farther than ſubſequent committees choſe to adopt them, until the late ſtatute, which, under certain reſtrictions, makes the reſolution of the committee final.

28 G. 3. c. 52. ſ. 25. to ſ. 30. See the Appendix.

The right of voting for knights of ſhires throughout the kingdom of England and Wales are regulated almoſt entirely upon the ſame plan; but the right in Scotland depends partly on its own cuſtoms, and partly upon acts made ſince the Union.

By the firſt ſtatute, which required a qualification of landed property, or, to ſpeak in a manner more ſtrictly conſtitutional, which deprived perſons in a very low and dependant ſituation of the exerciſe of that privilege, it was enacted, that the knights of the ſhires ſhould be choſen by people dwelling and reſident in the ſame counties, "*whereof every one of them ſhall have free land or tenement to the value of forty ſhillings by the year, at the leaſt, above all repriſes,*" and that they which ſhall be ſo choſen ſhall be dwelling and reſident within the ſame counties; and ſuch as have the greateſt number of them that may diſpend 40 s. by the year, and above, ſhall be returned as knights, &c.

8 H. 6. c. 7.

40 s. freehold.

And by a ſtatute, two years after, the freehold qualification was required to be lying within the county. By the former of theſe ſtatutes,

10 H. 6. c. 2. Within county.

ſtatutes, the ſheriff was empowered to ſwear the freeholder to his qualification. Afterwards, in order to prevent abuſes, and to clear up ſome doubts which had ariſen, it was enacted, that no perſon ſhall have a right to vote by reaſon of any truſt eſtate, or mortgage, unleſs ſuch truſtee or mortgagee be in actual poſſeſſion or receipt of the rents and profits of the ſame eſtate; but that the mortgagor, or *ceſtui que truſt* in poſſeſſion, ſhall vote for the ſame: And it was further enacted by the ſame ſtatute, *that all conveyances* of any meſſuages, lands, tenements, or hereditaments in any county, city, borough, town corporate, port, or place, *in order to multiply voices*, or to ſplit and divide the intereſt in any houſes or lands amongſt ſeveral perſons, to enable them to vote at elections of members to ſerve in parliament, *are void*; and that no more than one ſingle voice ſhall be admitted for one and the ſame houſe or tenement. By the above act of king William, an oath, therein preſcribed, is required to be taken by the freeholder at the time of voting; but that is ſuperſeded by one of a more ſpecial nature, in the laſt reign, which will be more particularly mentioned *hereafter*. But the fraudulent erection of freeholds, for the purpoſe of giving votes, having increaſed, notwithſtanding the laſt-mentioned act, the legiſlature was again obliged to interpoſe; and it was accordingly enacted, that all conveyances fraudulently made to any perſon

7 & 8 W. 3. c. 25. ſ. 7.

Splitting act. Vid. *poſt* for the conſtruction. Heyw. 99.

10 Ann. c. 23. Fraudulent conveyances.

to

to vote, *ſubject to conditions to defeat the ſame*, ſhould be diſcharged of ſuch conditions, and be abſolute in the grantee; and all bonds or contracts given to defeat the act, were declared void; and the perſons making ſuch conveyances, or voting under them, or, being privy to ſuch purpoſes, ſhall prepare the ſame, were alſo ſubjected to a penalty of 40 l. recoverable by any one in any of the courts at Weſtminſter.

The ſame act alſo required, that the freeholder, to be intitled to vote, ſhould have been charged or aſſeſſed to the public taxes, *church rates*, and *pariſh duties*, in ſuch proportion as other lands or tenements of 40 s. per ann. within the ſame pariſh, &c. are uſually charged; and ſhall have been in the receipt of the rents or profits, or have been intitled to have received the ſame, to the full value of 40 s. or more to his own uſe * *for one year* before ſuch election, *unleſs ſuch lands came within the time aforeſaid*, by deſcent, marriage-ſettlement, deviſe, or preſentation to ſome benefice in the church, or by promotion to ſome office to which ſuch freehold is fixed. And by an act, two years after, explanatory of the former, it was declared, that the former act ſhould not extend to perſons voting in reſpect of rents, tithes, or other incorporeal inheritances,

S. 2.

Aſſeſſment and year's poſſeſſion, Exceptions.

12 Ann. ſt. 1. c. 5. Exceptions of 10 Anne, extend to tithes, &c.

* This proviſion does not extend to burgage tenures, which may be conveyed at any time previous to the election. Vid. Burgage Tenures.

heritances, or of any meſſuages or lands in extraparochial places, or of any chambers or inns of court or chancery, or of places or offices not uſually charged to the pubic taxes.

18 G. 2. c. 18. 10 & 11 Anne, repealed in part, and re-enacted.

Theſe acts of the 10th and 12th of Anne, whereby the voter was to be charged or rated to the church and poor rates as well as to the land-tax, being found very inconvenient, they were in part repealed, and new modelled, by the 18 G. 2. c. 18. whereby it was enacted, that no perſon ſhall vote for the electing of a knight of the ſhire to ſerve in parliament for England and Wales, in right of any meſſuages, lands or tenements, which have not been aſſeſſed towards ſome aid granted to his majeſty *by a land tax*, twelve calendar months next before *ſuch election* * (which, by the 20th of G. 3. is reduced to ſix months). It alſo farther enacts, that no perſon ſhall vote in any ſuch election, *without having a freehold eſtate of the yearly value of forty ſhillings, over and above all rents and charges payable out of*, or in reſpect of the ſame, lying within the county of which *he has been in poſſeſſion above twelve*

3 Doug. 235.

* This is conſtrued before the time of voting. It would have been more uniform to have conſtrued it before the firſt day of the election, as the 3d of Geo. 3. c. 15. limits the right of voting to ſuch freemen as have been poſſeſſed of their franchiſe twelve calendar months "*before the firſt day of the election.*" And in 3 G. 3. c. 24. the annuity muſt be regiſtered a year before the firſt day of the election.

calendar

calendar months before the election, unleſs the ſame came to him within the time aforeſaid, by deſcent, marriage-ſettlement, marriage, deviſe, or promotion to any benefice in a church, *or by promotion to an office,* or ſhall vote in reſpect or in right of any freehold eſtate, which was made or granted to him fraudulently, on purpoſe to give his vote, or ſhall vote more than once at the ſame election, under penalty of 40l. and full coſts of ſuit. And the word "*charges*" is afterwards explained by a ſubſequent ſection, which adds, that no public or parliamentary tax, county, church, or pariſh rate, or any other tax, to be aſſeſſed upon any county or diviſion, ſhall be deemed any "*charge*" payable out of any freehold eſtate within the meaning of that act. Perſons claiming to vote in right of any rents, or any chambers, in the inns of court, or inns of chancery, or any meſſuages or ſeats belonging to any officers, which have not been uſually charged to the land tax, are excepted out of the act. This excepting clauſe, though it does not ſpecify "*tithes,*" hath been conſtrued, as being *in pari materiâ* with the 12th of Anne to include them. For in the Gloceſterſhire caſe, exception being taken to the vote of a rector of a pariſh, who had leaſed his tithes to the pariſhioners to the amount of forty ſhillings and upwards, and had not been aſſeſſed to the land-tax himſelf in reſpect thereof, his vote was held good.—Burgage tenures are

Exceptions of eſtates within year.

ſ. 6. Charge, what.

Exceptions of eſtates not uſually aſſeſſed.

Gloſterſh. Ca. p. 144. Tithes not aſſeſſed.

are not within theſe acts; but a perſon may vote for ſuch tenement, though poſſeſſed of it but a day before the election.

Ludd. 113. 37 Journ. 608. 38 Jour. 17. 28 G. 2. c. 18.

For the better aſcertaining of the freeholders at an election, it is further provided by the laſt mentioned ſtatute of G. 2. that the acting commiſſioners of the land tax, or three of them, at their meetings for their reſpective diviſions, ſhall ſign and ſeal one other duplicate of the copies of ſuch reſpective aſſeſſments after all appeals determined; and the ſame deliver to the clerks of the peace for their reſpective counties, to be kept among the records of the ſeſſions, to which all perſons may reſort, and inſpect the ſame, paying ſixpence: and the ſaid clerks of the peace, or their deputies, ſhall give copies of the ſaid duplicates to any perſon requiring the ſame, paying after the rate of ſixpence for every three hundred words. A number of nice and difficult queſtions having ariſen upon the right of voting, where the freeholder or his tenant was not rated *by name*, although the lands had in fact been rated in ſome other name, or without any name at all upon the rate, it was thought expedient to prevent ſuch doubts in future; and therefore it was enacted, that no perſon ſhall vote at a county election, in England or Wales, who has not been aſſeſſed to the land-tax (in caſe there ſhould have been one), *ſix* calendar months before the election; or, if the

Duplicates of aſſeſſments, ſigned and ſealed.

Copies given by clerk of peace.

20 G. 3. c. 17.

Six months.

the eſtate came by deſcent, marriage, marriage-ſettlement, deviſe, or promotion to any benefice in the church, or by promotion to an office, unleſs the freehold has been aſſeſſed to the land tax within two years next before ſuch election, in the name of his predeceſſor or his tenant. And as ſome nice queſtions had been raiſed upon the huſband's right of voting in right of his wife's dower, before actual aſſignment, which in little free-holds is ſcarce ever done; it is provided by the ſame act, that he may vote in right of ſuch freehold before an actual aſſignment of dower, in caſe the lands themſelves have been charged to the land-tax. And by the act of 20 *G.* 3. the commiſſioners of the land-tax are more particularly directed to deliver to the aſſeſſors a printed form of aſſeſſment (*Vid.* Appendix), who are to make their aſſeſſments by ſuch form. And the aſſeſſors are directed to make three duplicates of ſuch aſſeſſment; one of which, at leaſt fourteen days before ſuch aſſeſſment, ſhall be delivered to the commiſſioners of the land-tax, and ſhall be ſtuck upon the church door of the ſame pariſh; or, if the place where the lands lie be extraparochial, upon the church door of the next adjoining pariſh; and if one perſon holds different lands or tenements belonging to different perſons, the ſame are to be ſeparately aſſeſſed, that the proportion of land-tax paid by each may be

ſ. 2. Two years.

ſ. 12. Dower before aſſignment.

Commiſſioners to deliver a form to the aſſeſſors.

Publiſhing the aſſeſſment.

Aſſeſſing ſeparately to aſcertain proportion.

ſeparately and diſtinctly known; and if any one is omitted out of the aſſeſſment, he may appeal to the commiſſioners at their meeting for receipt of aſſeſſments, giving notice to one of the aſſeſſors. And after the aſſeſſment has been corrected, one of the amended duplicates, ſigned and ſealed by the ſaid commiſſioners, or any three of them, ſhall be returned to the aſſeſſors, who, within ten days after ſhall deliver it to one of the chief conſtables of the hundred within which the pariſh, or place, for which ſuch aſſeſſment was made, ſhall lie, for which the chief conſtable muſt give a receipt, and deliver in the ſame unaltered, at the next quarter ſeſſions of the peace for the county, riding, or diviſion, in open court, the firſt day of the ſeſſions, to the clerk of the peace, to be by him filed and kept of record. And any party aggrieved, by being omitted, inſerted, or overcharged, may appeal to the quarter ſeſſions, and if the appellant ſhall be adjudged, on ſuch appeal, to have been improperly omitted, he ſhall be deemed and taken to be rated in ſuch aſſeſſment, as if he had been originally inſerted therein by the aſſeſſors. And all perſons ſhall be at liberty to inſpect ſuch aſſeſſments, paying one ſhilling; and the clerk of the peace ſhall deliver a copy upon demand (being paid ſixpence for three hundred words), to be ſigned by him or his deputy. And any of theſe

Appeal to commiſſioners.

Aſſeſſment to be ſigned and ſealed and delivered at ſeſſions.

ſ. 11. Appeal to quarter ſeſſions.

ſ. 13.

Copies of duplicate.

theſe duplicates in the hands of the commiſſioners of the land tax, or of the receivers-general, or a true copy of ſuch duplicates ſigned as aforeſaid, (*i. e.* by the clerk of the peace or his deputy), or by ſuch commiſſioners, and purporting to be a true copy, ſhall at all times, and in all places, be allowed to be legal evidence of ſuch aſſeſſments and books of entries, in all caſes whatever. The clerk of the peace, or his deputy, is alſo required to attend at every election of a knight of the ſhire with original duplicates, at the requeſt of any candidate, ſuch candidate paying him 2 *l.* 2 *s.* for each day's attendance, and 1 *s.* 6 *d.* per mile for travelling charges. It is expreſsly provided, that this act ſhall not extend to annuities or fee-farm rents (duly regiſtered) iſſuing out of any lands or tenements thereby rated or aſſeſſed.

Signed by clerk of peace or commiſſioners, evidence.

N. B. Receiver General cannot atteſt a copy.

ſ. 14.

ſ. 2.

The voter, to entitle himſelf to vote, ſhall ſwear, if required by any candidate or other perſon having a right to vote, that he hath a freehold eſtate within the county, that he hath had it in poſſeſſion twelve months, and in other reſpects muſt ſwear to the qualifications required by the 18 G. 2. A Quaker may affirm. (*Vid.* Appendix for the oath).

Where the *tenant* of the voter was rated generally, it was preſumed to be the land of the voter, unleſs it could be ſhewn that the tenant had other lands of his own within the pariſh,

Gloſterſh. Ca. 40.

Where tenant rated *generally*.

and then the preſumption was reſolved to be againſt the voter, who, in ſuch caſe, muſt ſhew the land to be his own.

Gloſterſh. Ca. 57. Where lands doubtfully aſſeſſed. Ibid.

Where it was doubtful whether the lands voted for were within the aſſeſſment, or any article of it, it was reſolved, that either of the parties might give evidence to explain the rate, and to induce a belief that it was or was not included within the aſſeſſment; and it was alſo determined by eight againſt ſeven, that the aſſeſſor might give evidence of his intentions in making the rate. Where a perſon was rated under the name of Theophilus Richards, his real name being Richard Richards, a perſon neither aſſeſſor nor collector was ſuffered to prove the identity of the perſon. Many other deciſions on *virtual* rating might be ſtated; but ſince the 20 G. 3. c. 18. thoſe queſtions cannot again ariſe.

Name explained, 164.

Freeholders in towns, and counties of themſelves.

The number of voters in cities and towns, counties of themſelves, made ſome regulations neceſſary with reſpect to them. The ſtatute of King William, to prevent the ſplitting of freeholds, expreſsly extended to them. The ſtatute of 10th *Anne*, does not *literally* mention them, though it recites the ſtatute of King William, and extends to all conveyances of freeholds. And therefore, by the 13 G. 2. the proviſions and penalties of the ſtatute of 10th Anne, *c.* 23. *againſt frandulent conveyances*, are expreſsly extended to freeholders, and

13 G. 2. c. 20.

freeholds

freeholds in cities and towns, counties of themſelves. And the regulation of aſſeſſments, which, in the 18th G. 2. had taken place in counties, was, a year after, by the 19th G. 2. in a great meaſure extended to cities and towns, counties of themſelves. By this laſt ſtatute it was, amongſt other things, enacted, that no perſon ſhall vote for a member to ſerve for a city or town, which is a county of itſelf, in right of any freehold land, meſſuages, &c. of the yearly value of forty ſhillings, which have not been charged or aſſeſſed to the land-tax *twelve* calendar months before ſuch election; with an exception of perſons voting in right of any rents, meſſuages, or ſeats, belonging to any offices, in regard the ſame have not uſually been charged to the land-tax. And it is further provided, that the acting commiſſioners of the land-tax for the time being, or any three or more of them, at their meetings, ſhall ſign and ſeal one other duplicate of the copies of the aſſeſſment, or aſſeſſmennts, to be delivered by them to the aſſeſſors, after all appeals determined, and ſhall deliver or cauſe the ſame to be delivered to the perſons officiating as clerk of the peace within the diſtricts of the ſaid cities and towns, being counties of themſelves, and be kept among the records of the ſeſſions; to which all perſons may reſort, at reaſonable times and inſpect the ſame, paying ſixpence for ſuch inſpection.

19 G. 2. c. 28. Aſſeſſments regulated in cities, &c. counties of themſelves.

N. B. In counties ſix only, by 20 G. 3. And the mode of aſſeſſing further regulated by 30 G. 3. c. 35.

ſpection. And the clerks of the peace, or their deputies, are required to give copies when demanded, to any perſon, charging ſixpence for three hundred words and no more.

3 G. 3. c. 24. Annuities or rent charges.

Where the freehold voted for, conſiſts of an annuity, or rent-charge, of inheritance or for life, in order to aſcertain the qualification, and to prevent frauds, which it would otherwiſe be difficult, and indeed almoſt impoſſible to detect at the election, it is enacted, that no perſon ſhall vote for or in reſpect of an annuity, granted out of lands in any county, city, or borough, unleſs a regiſter or memorial of the grant of ſuch annuity ſhall have been entered with the clerk of the peace of the county where the lands lie, one year before the firſt day of ſuch election. If ſuch annuity, or rent-charge, ſhall have come by deſcent, deviſe, marriage, marriage-ſettlement, or preſentation to a benefice, or promotion to an office, within the year, a certificate thereof muſt be entered upon oath before the election. And ſuch memorial of the grant ſhall be written on parchment, and ſhall be ſigned and ſealed by the grantor, and atteſted by two witneſſes, one of whom muſt be a witneſs to the grant itſelf; and ſhall contain the particulars of ſuch grant, by and to whom, and when made, and ſhall ſpecify and particularize the lands out of which the annuity iſſues, or on which it is charged; and the grant itſelf ſhall be

To be regiſtered a year before the election;

except it comes within the year, then a certificate.

be produced at the time of regiſtering the memorial; and there ſhall be indorſed on the certificate to be given by the clerk of the peace, the day and year of entering ſuch memorial; and no aſſignee of ſuch annuity ſhall vote, unleſs a memorial be made of ſuch aſſignment, by the parties thereto, and alſo of ſuch grant in manner aforeſaid. And if ſuch grant or aſſignment be made and executed above forty miles from the office of the clerk of the peace, then the memorial thereof may be given in on affidavit made out before a judge or maſter ordinary or extraordinary; and the clerk of the peace, or his deputy, ſhall ſign a certificate thereof, which ſhall be good evidence of ſuch memorial. And the clerk of the peace, or other perſon officiating as ſuch, is thereby directed, under certain penalties, to keep books for the aforeſaid purpoſes, and to make entries purſuant to the act, and to ſuffer the ſame to be inſpected by any perſon, on the terms of paying the fees therein mentioned. And the clerk of the peace, or his deputy, is required to attend at the election with ſuch books, on reaſonable notice, and reaſonable ſatisfaction, under the penalty of one hundred pounds for neglect in the matters aforeſaid.

Memorial of aſſignment.

Under this act it has been determined, that a parſon who was entitled to a ſalary of twenty pounds a year, iſſuing out of the great tithes of the pariſh, had a right to vote, although he

Gloſterſh. Ca. p. 41.

Reſerved or fee-farm rents.

had not regiſtered it as an annuity*. And the ſame committee held unanimouſly, that neither reſerved nor fee-farm rents need be regiſtered, as not being within the meaning of the act.

Gloſterſhire Ca. 58. 127.

In order completely to underſtand theſe ſtatutes, we muſt firſt conſider what a "*freehold*" is; and ſecondly, who are conſidered as "*freeholders*;" for it is not every perſon who enjoys the profits of the freehold to his own uſe, who has a right to vote, as will be hereafter ſhewn.

Freehold, what.

"Freehold, in the ſtatute of H. 6. called "*frank tenement*," is an ambiguous term, ſometimes applied to the tenure of the eſtate, in contradiſtinction to baſe tenure, and ſometimes deſcriptive of the intereſt, in contradiſtinction to chattels real. It is uſed here in both ſenſes. Britton defines a "freehold" to be the poſſeſſion of the ſoil by a freeman; and S. Germyn ſays, the poſſeſſion of the land is called the Frank tenement or freehold.

Brit. c. 32. Dr. & Stud. b. 2. d. 22.

A freehold intereſt in land, is ſuch an intereſt as muſt continue for the life of the holder, or of ſome other perſon, or for an uncertain duration, which, as it may poſſibly laſt for life, is in contemplation of law equal to a life eſtate. This rule, however, has ſome exceptions, as in the caſe of tenant by ſtatute merchant, ſtatute ſtaple, or elegit, where the intereſt of the holder, though indeterminate by

* A ſchoolmaſter's ſalary iſſuing out of lands need not be regiſtered. 2 Lud. 432, 491.

any

any expreſs limitation, yet follows the nature of the debt, and goes to the perſonal repreſentative.

To endeavour to anticipate the difficulties which may ariſe at elections upon complicated queſtions of real property, would be endleſs; for though a year's actual poſſeſſion of the land to the uſe of the party himſelf, and the being aſſeſſed to the land-tax, according to the ſtatutes, will give him a right to vote, if he ſwears to a freehold, unleſs that poſſeſſion be ſhewn to be under a chattel intereſt, or under a bad title, yet when he claims to vote, under an intereſt accruing within the year, by deſcent, deviſe, marriage, or marriage ſettlement, his *title*, and not his mere poſſeſſion, is the ground of his right to vote. Rule.

By *title*, I mean the right of *poſſeſſion*, which, I preſume, it is ſufficient for him to prove, without being compellable to ſhew a right of *property*, as if it were in a real action.

The words of the ſtatute are, "unleſs the "ſame *came to him* within the time aforeſaid "[i. e. twelve calendar months], by deſcent, "marriage, &c." If the anceſtor, deviſor, or ſettlor, therefore, were ſeiſed of a freehold, whether rightfully or wrongfully, the eſtate *would come* to the voter by the deſcent, will, or marriage ſettlement, and entitle him to vote within the words and meaning of the ſtatute. But where the voter claimed title by purchaſe of a freehold, the objector ſhewing that the

ſeller was a deviſee of a *term* only, it was held ſufficient to turn the proof of a freehold upon the other ſide; ſo alſo where the objector ſhewed the will of the voter's father, by which a *term* was deviſed to the voter, it was held ſufficient to throw the proof of a freehold on the other party.

2 Lud. 441. It is conſidered as eſſential to a freehold, that it ſhould be part of, or fixed to the ſoil. Voter having polled for a windmill, which appeared in evidence to be fixed on a poſt, upon pattens, in a foundation of brick work, and to be upon a plot of ground incloſed with a fence, put up by the voter in a common field. It did not appear in whom the title to the ground was, further than as it might have been inferred from poſſeſſion. The vote was held good.

Thirty-four years poſſeſſion; for the ten firſt the voter had paid rent, but none paid or claimed the laſt twenty-four years, preſumed a freehold, and vote held good.

2 Lud. 425. It has been held that twenty years adverſe poſſeſſion will deſtroy the vote of perſons claiming the reverſion.

2 Fra. 89.

2 Lud. 427. Title accruing after election begun is no objection.

Ib. 440. Voter having a charge upon land deviſed, took to it by parol agreement with deviſee, in lieu of the charge, and his vote for it held good, though he had no conveyance.

So

So where the bargain and poſſeſſion had been for above twelve months, vote good, though no conveyance made, nor purchaſe money paid above ſix months before election. Ib. 540.

But where the bargain was made upon 23d *April*, to take profits from 25th *March* preceding, and the conveyance made in *May* following, but antedated. The election being on 7th *April* following, held no vote, for want of a year's poſſeſſion. Ib. 549.

Succeeding to the freehold, as bailiff, within the year, the vote held good. Ib. 541.

Upon the value of the freehold it has been held, that the criterion is, not what the tenant pays, but what the freehold is fairly worth to be let. Ib. 450.

And if tenant pay land-tax, it ſhall be added to the rent, but not church or poor tax. Ib. 475.

And where the landlord had let for fifty ſhillings, and taken receipt as for 30s. rent only, he was intitled to prove the real rent to let in his vote. Ib. 448.

Tenant was let in to prove the value under forty ſhillings, though the voter had ſworn to his qualification. Ib. 459.

Dower not claimed for ſome years, was preſumed diſcharged or releaſed, and the value of the freehold not reduced by it. Ibid.

Many queſtions have ariſen upon the forms of aſſeſſment preſcribed by the foregoing ſta- Ib. 514.

tutes

tutes on that ſubject. Omitting the name of the tenant, was held not fatal.

Ib. 497. It was alſo held,

1ſt, That it is not neceſſary that the form of the ſchedule ſhould be ſtrictly complied with.

2d. That the *owner*'s name muſt appear on the aſſeſſment, either as the *perſon aſſeſſed* or as *owner of the land*.

But in the Bucks Ca. and Cricklade Ca. which are prior, and 2 Lud. 537. the contrary was held; the deciſion there was, "That ſuch freeholders as were aſſeſſed for the premiſes in reſpect of which they claimed to vote, *either in their own names*, or *in the names of their tenants*, actually occupying the ſame *as tenants of ſuch freeholders*, were entitled to vote.

Ib. 2 Lud. And where a name ſtood ſingly on the rate, without being named *owner* or *tenant*, the committee let in evidence of the aſſeſſor to explain, in order to *ſubſtantiate* the vote.

Poſt. 72. n. Bedf. 2 Lud. 501. *Charity lands.* Where the voter has his qualification as a ſchoolmaſter, by way of ſalary, out of charity lands, aſſeſſment of it "as *charity land*" without naming the voter is ſufficient.

Ib. 502. So *Bolnhurſt Farm*, "Lilly tenant" vote for ſalary out of it.

Ibid. "Kimbolton School Farm" "J. Parſler tenant", Schoolmaſter voted.

Many

Many of the queſtions which have ariſen upon the form of the aſſeſſment, as to the inſertion of the landlord's and tenant's name, in the form preſcribed by the 20 G. 3. c. 17. are now put an end to by the 30 G. 3. c. 35. By which, after reciting the former act, it is enacted, that if the aſſeſſment be in the name of the perſon claiming to vote, *or* in the name of the tenant or tenants actually occupying the ſame at the time of the aſſeſſment, *or* in caſe of a freehold coming to the voter within the year, and aſſeſſed to the land-tax within two years, if it be in the name of the perſon or perſons by or through whom he claims title, or of ſome predeceſſor of the perſon claiming to vote, although the name of the tenant or tenants actually occupying ſhall not be inſerted, it ſhall be ſufficient.

And in Bucks Ca. Reſolved "It is not neceſſary that the name of the owner ſhould appear upon the rate." 2 Lud. 539.

Aſſeſſment of jointenants, either omitted cannot vote, though the one aſſeſſed may. Lud. Ca. 508. Bedf. Ca. But if the ſurnames are the ſame, and the chriſtian names differ, and the rate is *Mr.* C. Qu. If either can vote. One did, and his vote not objected to—the other alſo did, and his was objected to; and vote held bad: and argued that the other party, not having objected, has by inference applying the rate to him. Ib. 508. Bedf. Ca.

In

Ib. 509. In *truſt eſtates*, Ceſtuy que truſt in poſſeſſion muſt be rated, aſſeſſment in name of *truſtee* is bad, and ceſtui que truſt cannot vote.

Ib. 505. In *Annuities*, The aſſeſſment muſt be in the name of annuitant, if of *land owner* the annuitant cannot vote unleſs regiſtered

Ib. 506. In caſe of *tythes*, Vicar voted for tithes which the tenant occupied, and paid a compoſition for, and the aſſeſſment was "*T. B.* (the tenant) for houſe, land, and tythes in his own occupation," vote good, though in ſtrictneſs, the vicar was the *landlord*, and not on the rate.

Ib. 507. So, where prebendary, let his tithes to *A.* for lives, and *A.* under-let to *B.* And the aſſeſſment was "A. for tithes occupied by B." Prebendary's vote good, though he was not aſſeſſed.

Ib. 507. So vicar voted for a charge paid him, out of the tithes, as impropriator, and the impropriator only aſſeſſed, vote good.

2 Lud. 512. Bedfs. Ca. The freehold was deſcribed as in the *pariſh of Leigh*: the pariſh was *Leigh and Cleverton*, which were two diſtricts, and the aſſeſſment was in the *Cleverton diſtrict*, not fatal, variance being deſcribed in right pariſh.

But if voter take upon him to ſpecify the *diſtrict* or *tithing*, and it lay and be aſſeſſed in another, it is fatal, though he lay it within the right pariſh. Adjudged, Ib. in another caſe.

Deſcription of the freehold "*in Malmſbury*" which was a name common to a *pariſh* and a

town within the pariſh; the freehold lay in the *town* of Malmſbury, but in the *pariſh of Weſtport*, and held fatal. Adjudged Ib. (Sed Qu. The deſcription being ambiguous, whether it ought not to be referred to the *pariſh*).

So if voter deſcribe it in right hundred, but *wrong pariſh*, aſſeſſment in right pariſh, within the ſame hundred, vote bad. Id. 509.

Where the freehold was deſcribed in the right pariſh and hundred, but rated in a hamlet belonging to another hundred, yet the form of the aſſeſſment did not prejudice. Ib. 509.

Voter deſcribed his freehold as houſe and land, he was precluded from ſupporting it as an annuity iſſuing thereout. Ib. 503, 504.

Where he deſcribed the freehold as occupied by himſelf. It run into two counties, the part within the county for which he had voted was let, but he occupied the other part, vote bad. Ib. 510.

It was reſolved by ſeven againk ſix, that a voter, having ſworn to a freehold at the poll, ſhould not be admitted, though he was willing, to prove he had no freehold. This point was determined in the ſame manner in the Surry caſe; but was afterwards over-ruled, and the direct contrary held in the Bedfordſhire caſe in the year 1715, and in the Yorkſhire caſe 1735. And in the latter caſe, on the 2d March, the voter's confeſſion of having

Gloſterſhire Ca. 80. Reſolutions reſpecting freeholders votes.

1695-6, 16th Jan.

1715, 28th June.

1735, 26th Feb. Ib. 2 Dougl. 309. 315.

ing *no* freehold, though he had ſworn two one, was admitted; and as he ſwears not merely to fact, but to *law*, in which he may be miſtaken with a very good conſcience and meaning right, it ſeems as if he might be permitted to be a witneſs. In the Gloceſterſhire caſe, the voter produced had ſworn to a freehold of forty ſhillings value at the poll, but his vote had been rejected without any proof to impeach his right, and the committee held ſuch perſon had a right to vote, unleſs the other party could ſhew he had no freehold. He ſhall be preſumed to have a right until the contrary ſhewn. Where the voter claimed as a purchaſer, and the deed was produced, it was objected the ſeller ſhould be proved to have been ſeiſed at the time of the ſale; but it was anſwered, that the ſeiſin of the voter was ſufficient, and the deed was only to corroborate the title. And the committee determined the vote good by nine againſt four.

Gloſterſhire Ca. 42.

2 Fra 448.

Glouceſterſhire Caſe, 45.

In general the heads of objection to votes, which are mutually interchanged between the conteſting parties, are to be ſtrictly obſerved, and it is not allowed to the objector to ſhift his ground in order to prevent ſurpriſe upon the oppoſite party; but where the notice of objection given was, that the voter had not a freehold of forty ſhillings *per annum*, the committee, on a precedent from the Yorkſhire committee, held the objector might ſhew the voter had no freehold.

Objector not to ſhift his objection.

Ib. 105.

In

In the Gloſterſhire caſe, in the year 1775, the committee determined, that the perſon claiming to vote, being part of a corporate body, compoſed of a cuſtos and eleven vicars of Hereford, had not a right to vote for his ſhare of the profits of the eſtate which was veſted in the corporation, though it exceeded forty ſhillings *per annum*; it ſeems that in the caſe of dean and chapters of cathedrals, if the individuals or any of them have intire and diſtinct freehold eſtates, in ſeveralty, though in their eccleſiaſtical character, ſuch have a right to vote, but it is otherwiſe if they have no ſeveral eſtates, but only divide in ſhares the produce of intire eſtates, veſted in them as an aggregate corporation. In the Yorkſhire caſe, the ſpeaker of the houſe, in ſtating the objections inſiſted upon by the petitioner's counſel, enumerates one to hoſpital men. All collegiate and corporate bodies aggregate are upon the ſame footing; for they cannot ſever their reſpective intereſt: they are not ſeiſed in their individual, but only in their corporate capacity. In this reſpect it is they differ from joint-tenancy or tenancy in common; for joint-tenants, and tenants in common, are each ſeiſed individually; the former *per my & per tout*, the latter of their reſpective ſhares in the land, which are ſeveral in intereſt, though joint in poſſeſſion, until actual partition or ſeverance is made.

Gloſterſhire Ca. p. 136. Corporators.

Heyw. 78. & references Ibid. Yorkſhire Ca. 1736. 22d April.

Hoſpital men.

Joint-tenants. Tenants in common.

Diſſenting miniſters. Heyw. 82, 83.

A diſſenting miniſter of a chapel, who enjoyed an annuity of twenty pounds a year, by virtue of a deed of truſt, made to the ſole uſe and benefit of Thomas Tyler, ſo long as he ſhould live and ſupply the cure, and after his death and ceaſing to ſerve the cure, then in truſt to apply the ſaid annuity towards finding and providing another good, learned, and pious divine, of the Preſbyterian perſuaſion, to preach and ſupply the cure, ſo long as that chapel ſhould be tolerated, was held not entitled to a vote at the election for the county of Gloſter; and this reſolution was afterwards abided by in the Bedfordſhire caſe in the year 1785. A diſſenting miniſter had held his place upwards of 20 years, in right of which beſides voluntary contributions, he enjoyed two houſes and an orchard. One of the houſes let for 2 l. 14 s. *per ann.* For theſe he was regularly aſſeſſed to the land-tax. But his vote was held bad.

Gloſterſhire Ca. 176. 193.

2 Lud. 433.

22d April 1736.

In the Yorkſhire caſe, the ſpeaker of the houſe of commons, in ſtating the petitioner's caſe as inſiſted upon at the bar, enumerates ſchoolmaſters, pariſh clerks, and curates, as perſons who were inſiſted to have no right to vote from the freehold lands they enjoyed in their reſpective characters. But the *ſchoolmaſter* and pariſh clerk ſtand upon a better ground than diſſenting miniſters, who are appointed and removed at the will of the congregation,

Shoolmaſters.

Pariſh clerks. Schoolmaſter, ante 67. n.

gregation, however capriciouſly exerciſed; whereas the *ſchoolmaſter* and pariſh clerk hath each a freehold right, *quamdiu ſe bene geſſerit*, and are not removeable, but for good and ſufficient cauſe; and if they are removed upon inſufficient reaſons, may be reſtored by *mandamus*; and the miſconduct of a pariſh clerk muſt be ſtrong to juſtify the removal. But where a ſchoolmaſter was appointed by the truſtees (who was not qualified according to the will of the founder,) "*till a perſon properly qualified ſhould offer*;" and receive 10l. a year out of freehold lands for his ſalary, his vote was held bad, for that he was removeable at will.

Cowp. 370. Rex v. Warren. Curates.

Bedford Ca. 2 Lud. 430.

Where a rector had a power of appointing *one or more* ſchoolmaſters, and had appointed *one* who received a ſalary out of the rector's land, held he had a right to vote, and the poſſibility of appointing another was not prejudiced

2 Lud. 432.

Charge of 40s. in land "for the benefit of the ſchool of Thurleigh," the maſter intitled to vote for it. Curates, though they may derive part of their ſalary out of freehold land, if appointed and removed at the will of the parſon, muſt ſtand upon the ſame footing as diſſenting miniſters, and can have no right to vote; but if they enjoy a perpetual curacy, and derive part of their ſalary out of freehold land, they have as

Ib. 498.

good a right to vote as any parſon for his benefice.

Equitable freeholds.

An equitable freehold will give a right to vote as well as a legal freehold. Thus, in the caſe of mortgages or truſts, the legiſlature *declared*, that the mortgagor, or *ceſtuy que truſt* in poſſeſſion, had the right, and not the mortgagee or truſtee. But a legal freehold without the beneficial intereſt will not. Intended huſband *covenanted* with a truſtee, that the wife ſhould enjoy to her ſeparate uſe, it appearing the tenant paid rent to her, huſband's vote held bad.

Ceſtui que truſt.

2 Lud. 424. Bedfordſh. Ca.

2 Lud. 425.

Eldeſt ſon deviſee in truſt to raiſe legacies for younger children, refuſed to take the land ſubject, and the legatees entered, one of them after five years poſſeſſion voted, his vote held good.

2 Lud. 427. Bedfordſh. Ca.

Where the voter had agreed 13 days before the election, to ſell his freehold, but refuſed to convey till after the election, becauſe he had promiſed his vote, and ſigned the conveyance after the election, but the deed was antedated as of a date prior to the election. The vote was held bad.

Mortgagor where rent reduced under forty ſhillings.

Conſiderable doubt, however, has ariſen upon the right of a mortgagor to vote, where the yearly rents of his freehold eſtate, after deducting the intereſt of the mortgage, do not amount to forty ſhillings. The Bedfordſhire committee, in the year 1785, determined, by a majority of ten againſt three, that he had

no

no right; but the Cricklade committee, which was ſitting at the ſame time, determined, upon the ſame queſtion, in favour of the mortgagor's vote, without a diſſenting voice. On the one ſide it is argued, that the debt is perſonal, and the land mortgaged is but a pledge; that whilſt the equity of redemption remains, the abſolute dominion, ſubject to the creditor's claim, continues in the mortgagor; that there may be perſonalty ſufficient to anſwer the debt, and, as between the real and perſonal repreſentative, the land is the ſecondary fund to be applied; that whilſt the mortgagor is in poſſeſſion, the ſtatute of 7 & 8 W. 3. has determined the queſtion. On the other ſide it is argued, that if, after deducting the intereſt of the mortgage, the remaining rents do not amount to forty ſhillings *per annum*, the mortgagor, not having ſo much *clear yearly value*, is not within the 18 G. 2. c. 18. and conſequently cannot be entitled to the privilege. But upon examining the queſtion a little more minutely, and taking all the ſtatutes made *in pari materiâ* together, the latter deciſion ſeems the better. The mortgagor has clearly an equitable *eſtate* in the land, and not merely a right to redeem; it is deviſeable, chargeable, intailable. There may be curteſy of it, though the mortgage is in fee. The words of the ſtatute of H. 6. are, "to the value of forty ſhillings by the "year at leaſt, above all *repriſes*." The word

 "*repriſes*,"

"*reprises*," means ſomething drawn back, or taken *out of* the profits of the land, and applies to a rent-charge ſtrictly ſpeaking, and not to an actual or poſſible incumbrance *upon* the land. The right is in effect annexed to the ſoil; the mortgage is but an hypothecation as long as the mortgagor remains in poſſeſſion, and the ſoil in equity remaining in him, the right annexed muſt continue with it. During mortgagor's poſſeſſion, the mortgagee has no lien upon the rents; they are blended with his other perſonalty, out of which the intereſt of the mortgage is paid as a perſonal debt.

c. 18. ſ. 5. The 18 G. 2. when compared with the ſtatute of H. 6. cannot be conſtrued to extend to "incumbrances." The words are, "no perſon ſhall vote, &c. unleſs he has a "freehold, &c. of the clear yearly value of "forty ſhillings, over and above all rents "and charges payable *out of*, or in *reſpect* of "the ſame." But neither the principal nor intereſt is payable *out of* the land, whilſt the mortgagor remains in poſſeſſion, nor *in reſpect* of the land, but the *debt* contracted, which exiſts though the land ſhould be annihilated. The obſervations upon the foregoing acts are ſtill ſtronger, when they are compared with the *9th of Queen Anne*, reſpecting *the qualifications* of perſons to be elected members of parliament; for by that act, the qualifi-

cation

cation is required to be "clear of *incum-* "*brances.*" In the caſe of *Wetherill* v. *Hall,* which was an action of debt for a penalty for killing game, and the queſtion turning upon the defendant's qualification, the court of King's Bench it is true, determined, that the defendant, having mortgaged part of his eſtate, and the intereſt being deducted out of the rents, which reduced the reſidue under a hundred pounds a year, he could not be ſaid to have an eſtate of the *clear yearly value* of 100 l. *per annum,* and conſequently had no qualification. But allowing all the weight to ſo great an authority, it does not apply to the right of voting, becauſe the ſame words may have a different interpretation, according to the context to which they belong; and if the natural conſtruction of the ſtatutes, made *in pari materiâ,* does not extend to "incumbrances" the words upon which the court of King's Bench grounded their determination do not, in this caſe, neceſſarily vary their conſtruction; for the *clear yearly value* of the eſtate, *i. e.* the rent, deducting repairs and outgoings, remains the ſame, notwithſtanding the debt to which the land is ultimately ſubject, whenever the creditor chuſes to ſeize it in a courſe of law, or the debtor gives it up to him. But at moſt there ſeems no reaſon why ſuch a mortgage ſhould be *concluſive* againſt the mortgagor;

Wetherill v. Hall, B. R. M. T. 23 G. 3. Burn's Juſtice.

for as he may have conſiderable perſonal property in trade, diſcount, or government ſecurities, and the ſuppoſed incapacity is grounded on poverty, he ſhould be allowed to repel the preſumption by proving his ability to pay the intereſt out of other property. This unqueſtionably would entitle him, becauſe the intereſt is not neceſſarily paid out of the rents, but out of his general eſtate. The argument *ab inconvenienti*, which may be urged againſt ſuch an inquiry, applies equally againſt going into a man's private debts and calculations upon the remaining value of the eſtate. To admit the inquiry juſt far enough to diſfranchiſe the voter, and refuſe an inveſtigation which may repel the preſumption ariſing from that mortgage made, becauſe ſuch farther inquiry is inconvenient, ſeems very unjuſt; the argument ſhould be adopted or rejected *in toto*.

Vide 2 Lud. 472. 453. Where the caſes referred to are reported ſince the firſt publication, by which it ſeems a mortgage ſhall go in reduction of the freehold mortgaged, and perſonal ability ſhall not be given in evidence to repell it.

Gloſterſhire Ca. 129, 130.

Equitable freeholds.

The teſtator, who was the voter's father, had deviſed his eſtate to truſtees, to pay ſix ſhillings *per* week to John his eldeſt ſon, (who was an ideot,) and the remainder to his ſecond ſon, the voter, who was to be put into immediate poſſeſſion by the truſtees, on giving ſecurity to pay the aforeſaid ſix ſhillings a week to John. The voter had not given ſecurity, nor had the truſtees put him into poſſeſſion.

The

The amount of the ſurplus rents, after deducting the weekly charge, is not ſtated. The committee determined he had no right to vote. If, however, the ſurplus rents exceeded forty ſhillings *per annum*, and he had poſſeſſion and was aſſeſſed, though not put into poſſeſſion by the truſtees, he ſeems clearly to have had an abſolute, equitable eſtate, to a ſufficient amount for a qualification. The condition was annexed to the legal conveyance only. John, the annuitant in the above caſe, was held entitled to vote for the annuity. But it muſt be ſuppoſed that he was not, ſtrictly ſpeaking, an ideot, but only of weak intellects; for it ſeems clear, that an ideot is incapable of exerciſing ſuch right.

So in all caſes where there is an equitable eſtate, and a poſſeſſion, and rating under the ſtatute, the perſon ſo poſſeſſed has a right to vote. This poſition, if followed to its full extent, would lead to a nicety of diſquiſition beyond the ſcope of this treatiſe, as it includes the doctrine of courts of equity, upon queſtions of ſpecific performance and incomplete purchaſes.

If the party claiming a right to vote is in poſſeſſion of land, which he has agreed to purchaſe, and another has agreed to ſell, and the agreement has been reduced to writing, and ſigned by both parties, or their agents, lawfully authoriſed thereto, or ſigned by the ſeller only,

Equitable purchaſes.

29 Car. 2. c. 3.

only, or his agent, the right of voting ſeems to be in the equitable vendee. So, although there is no written agreement, if there has been a part performance of the contract, by an unequivocal act of the parties agreeing, or either of them with the conſent of the other; inaſmuch as equity would compel a ſpecific performance, and to moſt purpoſes conſiders the eſtate as belonging to the buyer, from the completion of the agreement, ſuch equitable vendee in poſſeſſion ſeems entitled to vote. If the act alledged in part performance be equivocal, as in the caſe of poſſeſſion by a purchaſer who was before in poſſeſſion as tenant, and it be neceſſary to raiſe the equity by ſhewing a written agreement; the agreement muſt be upon ſtamp, or it is abſolutely null and void to all intents and purpoſes. By the letter of the act, however, the ſtamp may be put on within twenty-one days from the time of ſigning the agreement; and it has been ſolemnly determined, once in the exchequer, and twice in chancery; once before the maſter of the rolls, ſitting for the lord chancellor, and afterwards in a caſe of Ford *v.* Compton, in which the former deciſions were mentioned, that the agreement may be ſtamped at any time after the twenty one days, upon paying the penalty, and complying with the other requiſites of the 9th and 10th of W. 3. and it will be valid *ab initio*. In the above caſes, although

23 G. 3. c. 58. Stamp.

Ford *v.* Compton. Hil. T. 1786.

9 & 10 W. 3. c. 25. ſ. 28.

although the purchaſer himſelf cannot gain a right to vote unleſs he has been a twelvemonth in poſſeſſion, and has been rated to the land-tax ſix months before; yet, if he dies within a week after poſſeſſion taken under ſuch equitable title, his heir, or deviſee, as it ſhould ſeem, would have the right of voting for ſuch equitable eſtate, under the ſaving clauſe in the ſtatutes, if the freehold has been aſſeſſed to the land tax within two years before, although the ancestor, at the time of his death, had not ſuch right complete. If the party contracting to buy be put into poſſeſſion of the eſtate, but has no legal conveyance, nor has paid any part of the purchaſe-money, it might be a very nice queſtion, Whether either and which of the contracting parties hath a right to vote; or whether the right is ſuſpended? By the doctrine laid down by lord Hardwicke, in *Pollexfin* v. *Moore*, where part of the purchaſe-money remained unpaid; and in *Tardiff* v. *Serugham*, by lord Camden; the vendor had an equitable lien upon the eſtate. And in *Blackburn* v. *Greg ſon*, though the queſtion was not ultimately determined, lord Loughborough conſidered ſuch a vendee in poſſeſſion, as a *truſtee* for the vendor *in toto*, or to the amount of the purchaſe money unpaid. But in the caſe of *Powell* v. *Heelis*, before lord Bathurſt, upon a bill filed againſt the aſſignees of a bankrupt, for priority of payment out of the

Where heir may vote, though anceſtor could not.

18 G. 2. c. 18. 20 G. 3. c. 18. ſ. 1.

Where the purch ſe money unpaid.

Pollexfin v. Moore, 3 Ak. 273.
Tardiff v. Serugham, 8 Dec. 1760.
Brow. Rep. 4-3, 424.

Fowell and Heelis, 14 June 1773.
Where a bond given.

the money ariſing by ſale of a real eſtate, which the plaintiff had ſold to the bankrupt, but for which he had not received the purchaſe-money, but had *bonds* for ſecuring the payment; his lordſhip diſmiſſed the claim, being of opinion, he had not a *lien* upon the eſtate, ſo as to prejudice the other creditors. This deciſion overſets the idea of a *lien* in its ſtrict meaning; for a *lien*, muſt remain upon the property, in the hands of any one who takes with notice of the claim. If the doctrine of the former caſes will hold to the extent laid down in *Blackburn* v. *Gregſon*; then, upon the hypotheſis ſtated, it is plain, that the vendee hath nothing but a bare poſſeſſion, the legal eſtate remaining in the vendor, becauſe he has never conveyed it; and the equitable intereſt by virtue of the lien reſulting to or rather continuing in him, becauſe the conſideration money has never been paid. In ſuch caſe, the bare poſſeſſion could not give the right, there being, neither in law or equity, an eſtate or intereſt in the occupier; and the other party, though he would have both the legal and equitable eſtate, would be without the poſſeſſion, which is rendered indiſpenſable by the ſtatute. If, however, by a leſs ſtrict notion of the vendor's equitable right, we conſider him as having parted in equity with the *property*, but remaining equitable mortgagee, then the purchaſer would come within

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the rule of the ſtatute as a morgagor in poſſeſſion, and would be entitled to the vote.

In the great conteſt in the Oxfordſhire election, the right of copyholders to vote became, to many, a matter of much doubt. The general feelings of mankind were in their favour, as it was thought hard to exclude ſo large a part of the community, from a privilege of voting for repreſentatives, who contributed to the neceſſities of the ſtate equally with thoſe who held by free tenure. But the original principles upon which the eſtates of copyholders were firſt granted out, when thoroughly underſtood, made it clear that they could have no right at elections, although the voice of party at that time decided otherwiſe; for as they held their land either by pure villenage or villein ſocage, and originally at the will of the lord, though afterwards rendered permanent by the cuſtom of the manor, the deſmeſne or ſoil of the land was in the lord himſelf, and only the enjoyment of the profits in the tenant. This was not a mere fiction, but a ſubſtantial and exiſting right, which drew to it the fruits of tenure in all its conſequences of eſcheat, forfeiture, alienation, and the other profits reſulting from feodal tenure; and it was an undoubted and eſſential part of this vaſſalage, neither to grant nor take eſtates of this kind, but from the hands of the lord to whom they were ſurrendered, and to enter the whole tranſ- Copyholders.

action

action upon the rolls of the lord's court, which remained as a perpetual evidence, both of the tenure, and of the right of the lord. The diſcuſſion of this queſtion employed one of the ableſt writers of that day, and the legiſlature, ſhortly after, to prevent any future queſtion upon the ſubject, declared that no perſons "*who hold their eſtates by copy of court roll*" ſhould vote at the election of any knight of the ſhire in England and Wales; and every ſuch vote is thereby declared to be void; and the voter ſhall forfeit 50l. to the firſt candidate who ſhall ſue for it, to whom the vote was not ſo given; and the proof ſhall lie on the perſon ſued.

Sir W. Blackſt. Treat. on Copyholders.

31 G. 2. c. 14.

In the Gloſterſhire caſe, the payment of a chief rent by the tenant, allowed to him out of his rent by his landlord, was held ſufficient evidence of a copyhold (though not the beſt evidence, and no notice was given to the lord or the ſteward to produce the court rolls) to put the other party upon proof of the freehold.

Gloſterſh. Ca. 36.

Evidence of Copyhold.

It is laid down generally by lord Coke that freeholders in ancient deſmeſne have no right to vote. Comyns, in his Digeſt, ſays, "if freehold in ancient deſmeſne he may elect." At the ſame time he notes lord Coke's opinion *contra*. Mr. J. Blackſtone, in his accurate and learned treatiſe upon the right of copyholders to vote, does not exclude freeholders in ancient deſmeſne from the exerciſe of that franchiſe; and

Tenants in ancient deſmeſne.

4 Com. Dig. 287. 328, 4 Inſt. 5. Heyw. 33. ſeq.

and the act of parliament, which was framed on his doctrine, declares the incapacity in those only who "*hold their eſtates by copy of court-roll.*" Among the privileges of tenants in ancient deſmeſne, exemption from the burden of contribution to the wages of knights of the ſhire was one, and this probably was the ground of the doctrine laid down by lord Coke. The practice, however, ſeems to have been clearly otherwiſe for a great many years. In the conteſted election of Leiceſterſhire, in the year 1770, the tenants of the manor of Brodens, which is ancient deſmeſne, were allowed to vote. The difficulty of theſe caſes ariſes from the nice diſcrimination between cuſtomary freeholds which are not held by copy of court-roll, and eſtates which are ſo held. In the Gloſterſhire election, the following caſe aroſe on the vote of John Boſwood, who had been rejected to the prejudice of the petitioners. He claimed as holding lands within the manor of Dymock, which is ancient deſmeſne. By the court-rolls of the manor produced in evidence it appeared, that the tenant, if he lived in the manor of Dymock, always took the oath of fealty; that the jury always preſented the death of a tenant, with the ſervices or heriots due: If thoſe were unknown they preſented him generally. That the Dymock jury was a court baron, and at Michaelmas was alſo a court-leet. That when a tenant wanted to alienate, a

F. N. B. 14 E. 228 & 2 Inſt. 543. 4 Inſt. 269.

Gloſterſhire Caſe, p. 64, & ſeq.

private court was called for that purpoſe, in which private court, three cuſtomary tenants and two free-benchers were preſent. The free-benchers were certain freeholders in the pariſh of Dymock, not holding cuſtomary lands, two of which ſat as aſſeſſors to the ſteward in every court, but did not appear veſted with any power, except as witneſſes. That licence was always granted to two cuſtomary tenants to inſeoff, and the ſeller paid a chief rent, being one year's rent, to the lord, upon alienation; and that the licence was enrolled; the lord of the manor, or his ſteward, had no other concern in the title; that the ſteward ſometimes called for the feoffment, to inſpect it, but never enrolled it. It was ſtated in argument by the counſel for the ſitting member, and not denied on the other ſide, that the deed of inſeoffment ought alſo to be enrolled as well as the licence, and that the ſteward can enforce the enrolment, if not done within the year, by calling for the deeds, and holding the eſtate till they are enrolled. By the cuſtom of the manor it appeared, that the eſtates deſcended to lineal heirs only, and, failing ſuch, to the lord of the manor's uſe.

The ſimilitude to a copyhold, on the one hand, by the fine on alienation; the licence from the lord to inſeoff a particular perſon, which was compared with the uſual ſurrender and acceptance of the new tenant in copyholds; the enrolment in both caſes; the fealty of the

new

new tenant; the domeſtic juriſdiction; the limited deſcent; were inſiſted upon as demonſtrative of its being a *copyhold*, though not at the will of the lord. On the other hand, it was argued that it appeared by the cuſtom that the tenants held their lands *freely*; that the ſeoffment was the title by which the tenant held, and not by any copy of court-roll; and that lord Coke expreſsly ſays, that *copyholders* are ſo called "becauſe the *court-roll* is the *only evidence* of their tenure;" that the poſſibility of reverter in the lord, and the limited deſcent, ſhewed the cuſtom of the manor, but did not prove the land copyhold; it was like tenure *in capite* of the crown, by which the Iſle of Man was held; that the domeſtic juriſdiction was a privilege, and their not owing ſuit to the county court was an exemption from a burden, not excluſion from a right; that their not contributing to the knights wages formerly, ceaſed to be an objection now, the practice of paying them was at an end; That, like the clergy formerly, they were not taxed in parliament, but now they were, like them they ought to have voices. On theſe arguments the committee reſolved, eight to five, "That John Boſwood, a cuſtomary and ancient deſmeſne tenant of the manor of Dymock, according to the cuſtom of the manor, had ſuch a *freehold* therein as intitled him to vote at the laſt election for the county of Gloſter."

Mar. Co. Lit. 68. a. n. 5.

Although nothing was ſaid in anſwer to the obſervation of fealty ſworn by the new tenant, it muſt be obſerved, that fealty is a ſervice not incident to baſe tenure merely, but may be called for, though very unuſual, from all the free tenants of a manor.

Conſtruction of ſplitting act. 7 & 8 W. 3. c. 25. ſ. 7.

The operation of the 7th & 8th W. 3. made to prevent the ſplitting of freeholds (which I have deferred conſidering hitherto that I might not break into the ſeries of ſtatutes before enumerated), muſt depend upon the opinion of the committee upon the intention of the party dividing the freehold. A *bona fide* tranſaction at any time, however ſhort, previous to the election, if *not intended* to multiply voices, cannot be within the meaning of the legiſlature, for that would lay a reſtriction upon advantageous alienation. In the Whitchurch caſe, in 1708, which happened twelve years after the act was made, the committee declared the right of voting in freeholders of freeholds not ſplit ſince the making of that act; but in the Weymouth caſe in 1714, the committee confined the operation of the ſtatute to freeholds ſplit ſince the preceding election in 1711. In the Haſlemere caſe the ſplitting act was argued to extend to all freeholds ſplit ſince the year 1696 (being the date of the act), or at leaſt, that the preſumption was againſt them; and this objection went to a majority, but muſt have been over-ruled, as the ſitting members were declared

16th Jour. p. 52.

17th Jour. p. 665.

2 Dougl. 317.

clared duly elected. Theſe caſes prove and illuſtrate what is contended for, that the intention of the party is the rule; otherwiſe, in all of them, the ſplitting of the freehold would have fallen within the ſtatute. In the Downton caſe it was contended, that votes given for parts of burgage tenements ſplit ſince the ſtatute were void; which, if it had held, would have ſet aſide the ſitting member. And the caſe reſted chiefly upon that objection (although occaſionality was alſo inſiſted upon), and the committee muſt have over-ruled the objection, having determined the ſitting member to be duly elected. Burgage tenements muſt not, however, be granted in ſubdivided and uncertain parts, for ſuch grant is bad for the whole. Nor muſt they have been divided within time of memory, for that will deſtroy the franchiſe annexed only to the entire burgage.

Burgage tenures not within the ſplitting act.

Lud. 169. 193.

Horſham Ca. 2 Fra. paſſim.

But being deſcribed in an old entry as a portion of a burgage does not vitiate.

2 Fra. 78. 80.

Where no evidence was given of its being a burgage, but that the owner of it had voted from 1763 to 1783, the committee would not on that ground preſume it one.

Fra. 83.

It now remains to be conſidered what is the right of voting at elections for citizens and burgeſſes in the different cities and boroughs which ſend members to parliament. Under the word Boroughs, I include the cinque ports,

whoſe members are called Barons. And theſe rights vary according to the different cuſtoms or uſages which have prevailed. Where there is no peculiar uſage or cuſtom, the common law right (as it is generally called) has been declared to be "*in all the inhabitants, houſeholders, reſiants within the borough*;" and in the Cirenceſter caſe, in the "*inhabitants houſeholders* *." But it does not ſeem to be finally ſettled what the common law right is. By the common law right muſt be underſtood, that right which, with a view to the conſtitutional nature of repreſentation, is the moſt reaſonable and effective. For as repreſentation commenced in the 49 H. 3. which is a period within legal memory, and the common law of the land is that which is built on immemorial uſage, there cannot, in ſtrictneſs, be a common law right. As this enquiry into the right of election for particular places, can be ſatisfied only by plainly ſtating what that right is, which is mere compilation, that right, where it has been determined, is added in the Appendix alphabetically.

Glanv. 107. 242. vid. alſo Boſton Ch. 1 Journ. 193.

Journ. v. 1. p. 702. col. 1. & vid. 2 Dougl. 232. 2 Fra. 450.

But as general knowledge cannot eaſily be drawn from particular inſtances, I have endeavoured to rank the different rights of voting in general claſſes, and from theſe to draw ſome general rules, which may apply in all caſes falling within the ſame claſs.

* In all the houſeholders, 4 Com. Dig. 288.

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These general rights may be ranked under three diviſions; right by tenure, which includes the burgage tenures; right by charter, which includes all caſes where the right of voting is in a body corporate; and rights popular, which laſt claſs comprehends all the other rights of voting. I rank freeholders of towns, &c. within this laſt claſs attributing their name rather to their intereſt than their tenure.

Rights by tenure.

Rights by charter.

Popular rights.

Before I proceed to treat of theſe, it is proper to premiſe, that the right of election, ſtrictly ſo called, and which cannot be altered, but by act of parliament, could be invariably fixed only by the laſt determination of the houſe of commons. This power of finally concluding the right by determination, was not delegated to the committees by Mr. Grenville's act; but ſtill continued in the houſe at large. By the 28 G. 3. c. 52. this right, under ſome reſtrictions, is at length communicated to the ſelect committee, exerciſing its juriſdiction under Mr. Grenville's act.

Vid. 4 Doc. 79. Vid. Pref. vi.

ſ. 25 to ſ. 30.

Vid. Appendix.

In conformity to the plan before adopted in conſidering the right of voting at county elections, I ſhall firſt conſider the general diſqualification to voting at all in elections of citizens and burgeſſes. The firſt which preſents itſelf, ariſes from that dependency of ſituation, and want of the common neceſſaries of life, which renders it probable that the party voting will not exerciſe a free choice. *Alms*, therefore, received within a year before the election,

Alms. 2 Dougl. 126. Phil. 161. Vid. Heyw. 166.

is held a diſqualification at common law. And the ſtate of the voter previous to that period is immaterial, and ſhall not be inquired into. This, I preſume, though laid down as a general poſition, muſt be confined to elections for citizens and burgeſſes only, as freeholders qualified within the ſtatutes, at the time of election, claim their privilege by ſtatute law, which has made no exception. It is now determined that alms do not diſqualify a freeholder otherwiſe qualified, though the Cricklade committee had held the contrary in a ſimilar caſe. So perſons claiming a right to vote by a burgage tenure, in their poſſeſſion at the election, are not, as it ſhould ſeem, diſqualified by the receipt of alms within the year, unleſs almſmen are excepted by uſage, or laſt determination, as in the Weſtbury caſe. In the Gloſterſhire caſe, pariſh relief given to the wife of the voter, within the year, was held the ſame as if given to the voter himſelf. Whether the vote was declared bad, is not ſtated in the printed reſolves. In a ſubſequent part of the book it is ſaid, that the number of paupers being nearly equal on both ſides, it was of very little conſequence which ſide defended their franchiſe. A caſe is there ſtated of a voter, who, within twelve months before the election, had received part of a ſum given by will to *ſuch poor of the pariſh of Thornbury as were not on the pariſh books, and received no monthly pay*; and his vote was determined to be good:

2 Lud. 365. Cricklade Ca.

2 Lud. 563. Bedford Ca. Ib. 567.

18 Jour. 154. Gloſterſh. Ca. p. 178.

good: the argument is ſtated as if it was the caſe of *alms*, and not of charity. What benefaction ſhall or ſhall not come under the denomination of "*alms*," has been a ſubject of nice diſcuſſion in ſeveral caſes, and how far it is diſtinguiſhable from *charity*; it having been held that the receiving of *charity* within the year is not a diſqualification at common law, though it may be ſo by the cuſtom and uſage of the particular city or borough. Thus, in the Ayleſbury caſe, and Reading caſe, by ſpecial cuſtom, charity is expreſsly held a diſqualification; and in the latter caſe, and alſo in London (by act of parliament), if received within *two years* before the election. There ſeems nothing in the etymology of the word "*alms*," which is plainly derived from the French word "aumône," or "almoigne," which, though it may furniſh matter of argugument to ingenious counſel, proves a difference between "alms" and "charity." Each of them, as to the perſon receiving, is a voluntary donation to ſupply his wants. In the Bedford caſe, the difference was ſtated to be between receiving the profits of a fund already exiſting, which *muſt* be applied to charitable uſes for the benefit of ſomebody, and the receiving of ordinary pariſh relief. The former was called a charity; the latter alms. But this explanation of the difference is not ſatisfactory. A gift of lands to the church, which could not hold by lay te-

Vid. 1 Dougl. 370.
2 Dougl. 126, 127.

Vid. Appendix. Ayleſbury Ca. Reading Ca.

2 Dougl. Bedford Ca.

nure, was called a gift in "frankalmoigne," or "free alms," which plainly ſhews that "alms" may iſſue out of a permanent and exiſting fund. A plainer rule ſeems to have been adopted in the caſe taken from the ſtatutes of Eliz. for relief of the poor; and it is now laid down, that "parochial relief" and "alms" as to the purpoſe of diſqualifying a voter, are ſynonymous terms. In the Coventry caſe, the receipt of ſacrament money, and bread money, within the year, were held not to diſqualify, as thoſe benefits did not come within the notion of alms. Alms, therefore, is generally defined to be *pariſh relief*, and is a diſqualification, if received within a year. But where the benefaction given aroſe from a fund called Harpur's charity, which was a diſtribution of money out of the ſurplus profits of *land*, and was generally given to people rated to the poor, it was held not to diſqualify thoſe who had received it within the year. But it is to be obſerved, *that the cuſtom had always been to admit them to vote.* In the Colcheſter Caſe, March 1789. Objection was taken to the votes of ſome freemen who had received Coxe's charity. It was a charge of 6*l.* per annum, iſſuing out of lands payable to the *churchwardens* annually, and to be diſtributed by them. It was generally given in ſhillings, which had been given to theſe voters. There having been no inſtance for an hundred years back,

Litt. f. 133. 1 Bl. Com. 101.

28 Eliz. c. 3. 39 Eliz. c. 3. 43 Eliz. c. 2.

Sacrament and bread money. 1798, 1ſt Mar.

Charities. Vid. Heyw 175. 188.

2 Dougl. Bedford Ca.

Vid. Colcheſter Ca. 7.

back, of any objection to their right of voting, on the ground of disqualification, the committee allowed the votes. So in a charity, called Hawes's charity, being of very trifling value, and generally distributed in bread to the *wives and children* of persons; those whose families had received it within the year, were held entitled to vote. Though in the Sudbury case this seems to have been doubted. In the same case, a charity called Welborn's charity, though arising from a close of four pounds ten shillings a year, having been left to the ministers and *overseers of the poor*, to be distributed *by the overseers* in three or four shillings to each person, was held to disqualify those who had partaken of it within the year. This being distributed by the overseers, seems to have been considered as parish relief. But where there is a charitable foundation, in which the members have a permanent interest, as in the case of Chelsea and Greenwich pensioners, this does not disable them from voting, for it is their estate. So in the Bedford case, a charitable institution called St. John's Hospital, founded in the year 1180, by Robert de Parys, for six poor men to pray for the soul of the founder, which had a chantry, and was incorporated; the persons who were members of it were qualified. The result of these cases seems to be, that where the

Ex Relat. Mr. Neville the chairman.

2 Dougl. Bedford, &c.

Phil. 203.

2 Dougl. 127.

Chelsea and Greenwich pensioners, Ibid.

the voter had a permanent intereſt in the charity land, or where the profits were very inconſiderable, and given to the wife and children; or, though given to the voter himſelf, *if the uſage was for the receiver of it* * *to vote*; that in theſe caſes he is not diſqualified. But where, though out of a permanent charity fund, it is diſtributed as pariſh relief, the receiving of it will diſqualify. And in the Taunton caſe, the ſame deſcription was laid down, and diſtinction taken between *alms* and *charity*. And in the Haſlemere caſe, which was ſubſequent to both, the ſame idea ſeems to have prevailed. In this laſt caſe, the queſtion was upon the diſtribution of the profits of a real eſtate, amounting in the whole to ſixteen hundred pounds a year, which had been deviſed to truſtees in the reign of Car. 1. to be diſtributed among certain pariſhes, for ſetting the poor to work, binding out poor apprentices, and educating poor children. But the diſqualification contended for on this ground not extending to a majority, there was no deciſion on the point. Sending a child into the pariſh peſt houſe, when the ſmall pox was prevalent in the town, was held not ſufficient of itſelf, without receiving other alms or charity to deſtroy the vote, though the voter was unable to bear the ex-

1 Dougl. 365. Taunton Ca.

2 Dougl. 317. Haſlemere Ca.

* Freemen receiving King's and Cole's charity, not diſqualified. Sudbury, Phillips 148.

pence

pence at home. Many others who were able ſent their children thither on the ſame account. 2 Fra. 453. Cirenceſter Ca.

So where to avoid the ſpreading of the ſmall pox, the pariſh invited perſons to come in and be inoculated at the expence of the pariſh, and many came in and were inoculated, and ſupported during the illneſs, out of a mixed fund of pariſh money and a charity fund, held that none receiving ſuch relief were diſqualified. Pariſh relief given to the family of a militia man in actual ſervice, ſhall not prejudice his right. 2 Lud. 364. Cricklade Ca. 18 G. 3. c. 59. ſ. 25.

Occaſionality is another general ground of rendering invalid votes which in other reſpects are good. It has been inſtanced at large, in the caſe of freeholders for counties, and cities counties of themſelves, and the occaſionality now alluded to, is where the right of voting is in freemen, and the freedom is given within the year before the election, which will be treated more at large hereafter. This objection does not hold to perſons who have an inchoate right to their freedom by birth, marriage, ſervitude, or ſuch like means, nor to perſons claiming to vote in right of burgage tenures conveyed within the year. But it has been held, to apply to rights of voting, in reſpect of a freehold within a borough, not being a county of itſelf, and ſo not within any ſtatute. For ſeventy-two votes were ſtruck Occaſionality of freemen. 3 G. 3. c. 15.

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off the poll, as voting under conveyances made to the voters, within three months before the election. Theſe votes did not all ſtand intirely upon the ſame queſtion, there being ſtronger evidence of the intent to multiply votes in ſome of the caſes than appeared in others, but as much the greater part muſt have been avoided upon this principle wholly, is not worth the trouble of diſtinguiſhing the caſes.

Vid. Heyw. 208.

The conveyances were made by perſons not candidates, nor appearing in evidence to have any connection with the candidates for whom the votes were given; in ſome caſes an inadequate, and in others, adequate conſiderations were paid, in ſome re-conveyances were proved, in others not, in ſome the grantees were reſident in the borough, in others not; ſo that the deciſion went probably upon the principle above laid down; Hole's vote is clear to this point. But a conveyance by father to ſon of one-ſixteenth of a tenement (which the father had long had) in conſideration of natural love and affection, thirteen months before the election, and half a year's rent paid under it, five months before the election, the ſon's vote was held good. And where a purchaſe was made by a gentleman of fortune, of two acres of land, for a fair conſideration, about ſeven or eight months before the election, knowing there was to be

Ib. 274.

a conteſt in the borough, the vote was held bad. Where mortgage was paid off by a loan from a third perſon to mortgagor, without intereſt three months before the election, mortgagee being then in poſſeſſion, and it appeared the mortgagor, after the election, made a new mortgage to the lender, for the money lent, and intereſt, the vote of the mortgagor was held bad, though he was in poſſeſſion at the election. In one inſtance it was endeavoured to vitiate the vote of the grantor, who voted for part of the tenement he had retained, but his vote was held good. By 26 G. 3. c. 100. no perſon ſhould be admitted to vote as inhabitant paying ſcot and lot; inhabitant houſeholder, houſekeeper, and pot-waller, legally ſettled; or as an inhabitant, houſeholder, houſekeeper and pot waller; or as an inhabitant houſeholder reſiant; or as an inhabitant within ſuch city or borough, ſix calendar months previous to the day of election, *at which he ſhall tender his vote*: if he ſhould vote, to forfeit 20 l. ſuable within ſix months. S. 2. to extend to no other deſcription of voters.

1 Fra. 176.

Ib. 177.

Ib. 172.

Of inhabitants.

Where the right of election is large enough to comprehend certificate perſons, and there is no ſpecial uſage to the contrary, ſuch perſons have a right to vote; for though they are not pariſhioners, they are not paupers, and may be very ſubſtantial perſons. And as the doctrine upon certificates has been extended to the families and poſterity of perſons reſiding

Certificate men.

under

under them, ſo as to prevent their becoming pariſhioners, unleſs the certificate ſhall have been diſcharged by ſerving an annual office in the pariſh, renting a tenement of 10l. a year, or relinquiſhment, it would be very hard to deprive them of a perſonal right where they actually reſide, by raiſing a preſumption of poverty againſt the real fact. In the Taunton caſe, certificate men were excluded from voting by the *lex loci*; but in the Bedford caſe, the objection, though taken to ſeveral voters, and at firſt ſtrongly contended for, was afterwards given up by the counſel.

Taunton Ca. 1 Dougl. 373.

2 Dougl. 111. Bedford Ca.

Perſons who have been convicted of bribery, over and above other penalties to which they are ſubject by ſtatute, or puniſhment at common law, are expreſsly diſabled from voting ever after; but as the conſideration of bribery will be rather extenſive, I ſhall reſerve it for a ſubſequent chapter.

Bribed perſons.

7 & 8 W. 3. c. 4.

2 G. 2. c. 24. ſ. 7.

I come now to the firſt claſs, of the rights of election by burgage tenure, which is conſidered as a real right annexed to the ſoil, and cannot be loſt though the tenements are deſtroyed, ſo long as the evidence of the right remains. In Aſhby and White, Lord Chief Juſtice Holt ſays, that it is part of the conſtitution of England, that burgage tenure boroughs ſhall elect members to ſerve in parliament, and that ſuch right of election is a privilege annexed to the burgage land, and is a *real* privilege. This right, however, was probably

Burgage tenure. 3 Lud. 210.

6 Mod. 51, 52. Ld. Raym. 951. Salk. 18. 20. 30.

probably in its origin *perſonal*, and exerciſed by the inhabitant houſeholders of burgage tenements *as inhabitants*. The burden of paying the members wages, being co-extenſive with the right, was probably levied upon ſuch inhabitants only who had a right to vote, which made the inhabitants of new houſes not very anxious to participate in that right, and would alſo make the old burgage tenants jealous of their partaking of the privilege; and from hence probably the rights have gradually been conſidered as territorial rather than perſonal. In the ſecond Downton caſe, a burgage was defined to be, "an entire indivi- "ſible tenement, holden of the ſuperior lord "of a borough by an immemorial certain rent "diſtinctly reſerved, to which the right of vot- "ing is incident." In the firſt Downton caſe, the definition given was, "one undivided and "indiviſible tenement clearly deſcribed, nei- "ther created nor capable of being created "within time of memory, which has imme- "morially given a right of voting." The rent payable is not always the ſame in the ſame borough, nor always correſponds with the reputed value of a burgage rent within ſuch borough. Thus in Clithero, where the reputed rent is one ſhilling and four pence, there are burgages paying eight pence rent. In Weſtbury, either four pence or two pence is a burgage rent, and ſo of ſeveral other places.

Lud. 178.

Definition.

1 Dougl. 205.

Vid. Lud. 303.

places. The proportion which the value of any particular burgage rent reſerved, bears to the reputed value of the common burgage rent within the borough, has, in many places, by uſe, been transferred to the burgage itſelf, ſo as to imply a diviſion of it, though, in fact, the burgage is entire. Thus in Downton, there are burgages called half burgages, and quarter burgages, but where theſe are not created within the time of memory, but have been immemorially entire, they give a right of voting, and are, in truth, taken to be entire burgages; but no diviſion, made within time of memory, can give a right which belongs to the entire burgage only, and on that reaſoning, probably, the firſt Downton caſe was determined. In the Horſham caſe a diſtinction was endeavoured to be made in argument, between burgage tenure boroughs of the deſcription of Downton and Clithero, in which the intirety of the ancient burgage was eſſential to give a vote, and burgages at common law, which as far as they are defined by Littleton, may be of a diviſible nature, ſo they were originally burgages, and are ſtill holden wholly, or in part of the lord, by certain rent. The inconvenience of indiviſibility on one ſide, and diviſibility on the other, are fully ſtated in the arguments of counſel, and reported by Mr. Fraſer.

Horſham Ca. 2 Fra.

1 Dougl. notes on Downton Ca.

The

The committee gave no countenance to the diſtinction, but held the entirety of the burgage eſſential to give the vote. If the parcels in the conveyance to the voter, or to thoſe under whom he claims, can be conſtrued with propriety, as including the whole burgage, it ſhall, though ſome part be dropped in the enumeration. Thus where a *barn* and *orchard* were omitted in the conveyance to the voter, which were ſhewn to be part of the burgage by an old entry, deſcribing the burgages, yet there being other general words which might comprehend theſe, and there being no ſeparate occupation of them, the burgage was held entire. But where by a deed of 1713 the burgage appeared to conſiſt of *two acres*, it being deſcribed in evidence before the committe, as being but about a quarter of an acre, the vote was held bad. Where the parcels were *general*, and appeared to be *part* of the Talbot Inn, the vote was held bad. So wherever the voter claimed in right of *part* of a meſſuage. So where a rent in 1611 had been ſince clearly ſubdivided and multiplied, and was payable in diſtinct portions, for they muſt be conſidered as diſtinct reſervations upon the broken parts of the burgage. *A fortiori*, where it appears clearly the voter has but part of the burgage, by comparing his conveyance with an ancient deſcription of the burgage. Or where a ſeverance can

2 Fra. 78. Tovey's vote.

Ib. 79. Holroyd's vote.

Ib. 79.

Ib. 82. paſſim.

Ib. 82. Humphrey's vote.

Ib. 89. Ireland's vote. Roberts's.

Rawlinſon's vote. Id. 9 c. Griffith's vote. & paſſim.

be ſhewn at any period. So where the conveyance was of one ſixth part the whole in ſix parts, to be divided of and in two cloſes of land (with their deſcriptions) containing by eſtimation, eight acres, being *ſix entire burgages*, the grantees' votes were held bad; for each did not take an entire burgage in ſeveralty, but one ſixth of the whole land, which gave an intereſt to each of one ſixth part in every burgage, by which the intirety was deſtroyed. But a re-union of the poſſeſſion will reſtore the vote; and that may be preſumed from circumſtances *ut videtur*.

Ib. 107.

Ib. 113. Scott's vote. Ibid.

A variance in the rent will not prejudice if the entirety of the burgage be proved by boundary. Nor if it be deſcribed in the conveyance to the voter as *four* acres, though it ſhould appear to have been originally but *three*, if the *three* be part. Where the burgage was ſhewn to have been divided in 1693, the vote was held bad. Of theſe burgage tenures, it is computed there are, in all, twenty-nine. Thoſe who wiſh to go more accurately into the doctrine of burgage tenures, will find ample field for amuſement and inſtruction in the caſes which have been referred to. Theſe burgages *being excepted expreſsly out of the Durham act*, may be conveyed at any time before the election, but the conveyances and titles muſt be as ſtrictly made

Ellis's vote. 2 Fra. 121.

Ib. 123.

Ibid. 1 Dougl. Notes on Downton Ca.

Q. 3 G. 3. c. 15. Vid. App. to Horſham Ca. 2 Fra. where Mr. J. Groſe conſiders the return of the title deeds as no prejudice to the vote given for a burgage conveyed in order to give a vote, according to the law of parliament.

and

and proved, as if it was a real ſale for a valuable conſideration, and the queſtion of title was in iſſue in ejectment. This Mr. Douglas accounts for by obſerving, that as the privilege of voting is the object meant to be acquired by the conveyance, the means, when once authoriſed, muſt be ſtrictly complied with; and Mr. Luders has properly compared it to the ſolemn farce of a recovery, where, though the whole is a fiction, the parts muſt be ſtrictly repreſented: ſo here the formalities muſt be obſerved as a compenſation for the want of ſubſtance. It was objected upon petition, that the deviſees, in truſt for an infant, could not, in breach of that truſt, convey the burgage tenures deviſed to them ſo as to give a right of voting; and even though the conveyances ſhould paſs the eſtate, yet that the grantees would be ſo far affected by notice as to be incapable of taking any uſe or privilege for their own benefit; but the committee held otherwiſe, and eſtabliſhed the election. If more than one burgage tenant join in conveying diſtinct tenements, the conveyance muſt be ſtamped as many diſtinct conveyances, or it is void,—as to all but the firſt perhaps it may be good to paſs his intereſt.

3 Dougl. 145. Peterboro Ca.

Lud. 313. Note on Downton Ca.

3 Lud. 195.

The corporate right of election is preſcribed by charters which are moſtly exiſting. This right of election is modern in compariſon with others. Moſt of the places which owe their

Corporate rights, Vid. Hob 14. 15, 12 Co. 120.

Vid. 1 Lud. 98. and 2 vol. 238. Two learned notes on the riſe and progreſs of corporations.

privilege to charter, have had it conferred upon them ſince the reign of E. 6. and particularly in the reigns of Mary, Elizabeth, and James the Iſt. E. 4. was the firſt king who took upon him not only to grant the privilege, but alſo to eſtabliſh the mode of election by charter, having granted, amongſt other things, to the borough of Wenlock the right of ſending one burgeſs to parliament. It appears firſt to have returned two members in the 33 of H. 8. Car. 2. was the laſt who granted this right to Newark. The power of the crown to make that grant was much diſputed, but at length eſtabliſhed as far as a majority of the houſe of commons could at that time eſtabliſh ſuch a queſtion.

17 E. 4. 1478.

Willis, 48. Carew, 219.

A. Grey's Deb. vol. 4. p. 297. to 304.

Vid. 1 Dougl. 70.

In Aſhby *v.* White, Lord Holt puts the caſe of a grant within memory of ſuch right, but ſays it can be given only to a *corporation.* No king has ever attempted it ſince, nor could it be done now without a violation of the articles of union.

What perſons come within the deſcription of the charter, or are legally inveſted with thoſe corporate rights, by virtue of which he is entitled to vote at an election, muſt ſometimes create queſtions of nicety. When, for inſtance, an integral part of a corporation conſiſts of an indefinite number of freemen or burgeſſes, who are required to comply with ſome conditions, or conform to ſome rules, before

before they are fully inveſted with that corporate capacity by virtue of which they claim to vote for members of parliament, it will often be difficult to decide what is a proper and ſufficient conformity, according to the ſpirit as well as the letter of ſuch rules.

In the Sudbury caſe it was determined, that perſons who had tendered their votes as freemen, after due application to be admitted to their freedom, and wrongful refuſal to admit them, were entitled to vote, and ought to have been polled. So in the Shrewſbury caſe, perſons entitled to be ſworn in burgeſſes, and as ſuch to vote for members of parliament, having applied to be ſworn in, and having been refuſed, had tendered their votes at the election, which were rejected; but it appearing that others, who claimed to be burgeſſes in the ſame right, had been ſworn in upon mandamuſes, the committee held the tender of their votes ſufficient, and that they ſhould have been received. In the Derby caſe, the perſons claiming to vote upon antecedent titles, which were not completed by admiſſions, applied to the mayor and three aldermen (who by charter were directed to give the oaths of allegiance and ſupremacy before admiſſion), under a miſtaken but common notion in the borough, that they alſo had the power of admitting. In truth the power of admitting, by the conſtitution of the borough, was at a common hall of twenty; but

2 Dougl. 129. Sudbury Ca.

1 Dougl. Shrewſbury Ca.

Tender ſufficient where there was a right.

3 Dougl. 283. Derby Ca.

the mayor and aldermen neither gave the oaths, nor did admit the claimants at a common hall, and they having ſatisfactorily proved their antecedent titles, the committee held they ought to have been admitted to vote, and conſidered them as polled. And where the election was upon Monday and the application was made on Sunday preceding, it was held ſufficient. So where a court was held on the Saturday before the ſame Monday, at which the voter might have applied, and did not, but applied to the mayor to hold a court on the Monday morning, who refuſed, the vote was held good. In theſe caſes the antecedent title was admitted to be clear. But where the antecedent title was doubtful, as whether a *ſecond born* ſon, who was the eldeſt at his father's death, ſhould come within the deſcription of *eldeſt ſon* of a freeman, to which latter deſcription the right was annexed, and an application to be enrolled at a prior ſeſſions which was refuſed, and he brought no mandamus, for which there was time prior to the election, his vote was rejected. And perhaps there may be ſome doubt, whether in the caſe of a clear title, which requires ſome addition of form to be conferred by a third perſon to make the right complete, the voter is bound to follow up the ordinary application by an application for a mandamus, where a mandamus will lie, and the time would admit. As where the preſentment of a burgage tenant

1 Fra. 166.

Ib. 167.

1 Fra. 170. n.

Rex v. Midhurſt Wilſ. 283.

tenant is requiſite to give the right, if the homage refuſe to preſent, or the Lord or his ſteward to hold a court, in which caſe the votes might have had a mandamus. If no rate is made for a conſiderably period, and a new occupier wants to have a vote, he ſhall not have it unleſs he obtain a rate to be made by mandamus, if the overſeers refuſe. But perhaps ſuch a meaſure as this, would hardly be exacted by a committee, if there was ſatisfactory proof that the making of the rate was fraudulently deferred. Nor does it ſeem a caſe in which a mandamus would be granted if it were applied for. In all caſes, where the corporator has been in undiſturbed poſſeſſion of his franchiſe for ſuch a period as to be good againſt a *quo warranto*, the committees will not enter into any objection to the title of the voter; that period, by analogy to the ſtatute of limitations, was formerly ſettled at twenty years. In the caſe of a derivative title, endeavoured to be impeached by ſhewing the original title of the mayor for the time had, the mayor having died in poſſeſſion of the office, Blackſtone J. would not ſuffer evidence to impeach his title, and the defendant had a verdict. By the ſame rule, it is to be preſumed, a committee would not entertain ſuch an objection upon an election petition. The court of king's bench inclined lately to narrow the time of limitation, and a caſe was

3 Lud 100. and ſeq.

Rex v. Spearing. Vid. note in Rex v Stace, p. 4. of Reports.

Helleſton Ca. 2 Dougl. 25.

Rex v. Stace. Mich. 1. 1785. 1 Term Rep.

Rex v. Pike. 20 G. 1. Vid. note in Rex v. Stace.

mentioned by Mr. J. Buller, where fourteen years undiſturbed poſſeſſion of a franchiſe was held good on a motion for a *quo warranto*. But in the caſe of *Rex* v. *Bond*, M. T. 1788, Lord Chief Juſtice Kenyon ſaid, that the rule of twenty years limitation ought not to be departed from. Since this however the judges of B. R. have concurred, in favour of corporate rights, to fix it at 6 years, 1791.

3 Dougl. 304.

2 vol. p. 5. 4th Co. caſe of Corporations.

The mode of election may be regulated by a bye-law of the corporation fairly and properly made, ſo it be conſiſtent with the charter or the law of the land; and long uſage is evidence of ſuch bye-law. But uſage againſt the charter is no evidence of ſuch right,

4 Inſt. 48. Glanv. p. 16.

becauſe the bye-law inferred from the uſage is bad. Where the right of voting was veſted by the charter in the mayor, jurats, and freemen, inhabitants, and the right of election was by a bye-law confined to ſuch freemen and jurats as ſhould be inhabitants in the town, by the ſpace of three months together next before the election; this bye-law was determined to be bad, and two jurats, whoſe votes had been rejected becauſe they had not inhabited within three months before the election, were held entitled to vote. But it appears in the caſe, that they had houſes within the borough for which they paid rates, and which they had not deſerted; it is poſſible, therefore, that they might be conſidered as inhabitants, though they were not reſiants.

So

So in the Dover caſe, the right of voting was in the mayor, jurats, and commonalty, which commonalty conſiſted of above eighty perſons who uſed to vote. At a public meeting, the commonalty being preſent and conſenting, it was agreed to narrow the right to thirty-ſeven, and although the elections had been made accordingly by thirty-ſeven only, for above ſixty years, yet their election was held bad, and the member returned upon the ſuffrages of the commonalty at large was determined to be duly elected. Glanv. 65.

In ſome corporations freemen and burgeſſes are made without any antecedent title, at the will and pleaſure of other parts of the corporation, and are then called *Honorary*, in contradiſtinction to ſuch other freemen or burgeſſes who acquire the right of becoming ſo by birth, ſervitude, marriage, or redemption, according to the uſage of the borough. Honorary freemen.

By the conſtitution of ſome boroughs, ſuch honorary freemen or burgeſſes have voices in elections for members of parliament. Durham, Bedford, and a variety of other places, exhibit inſtances of this ſpecies of right. As ſuch perſons muſt be regularly admitted according to the rules and cuſtoms of the corporation, ſuch admiſſions muſt be ſtrictly proved and the entry of them in the court book of the corporation muſt be ſtamped with a two ſhilling ſtamp purſuant to the acts referred to. The 5 W. & M. c. 21. 9 & 10 W. 3. c. 25. 5 G. 3. c. 46.

abuſe

abuſe of this right of making freemen by the corporation of Durham occaſioned the ſtatute
3 G. 3. c. 15. made in the 3d year of G. 3. which after reciting the miſchief of *making* freemen to influence elections, enacts. That no perſon claiming as a *freeman* to vote at any election, &c. for any city, &c. where ſuch voter's right of voting, is as a freeman only, ſhall be admitted to give his vote unleſs ſuch perſon ſhall have been *admitted* to the freedom of ſuch city, &c. twelve calendar months before the firſt day of ſuch election; and any perſon voting contrary to the true intent of the act, to forfeit 100 *l.* to any one who will ſue for the ſame.

S. 2.—Not to extend to perſons intitled by birth, marriage, ſervitude according to the cuſtom of the city, &c.

S. 3.—Penalty of 500 *l.* upon mayor, &c. antedating the admiſſion.

S. 4.—Any candidate, his agent or two freemen ſhall be permitted on demand, paying one ſhilling, to inſpect the books and papers wherein the admiſſion of freemen ſhall be entered before, or one month after the election, and to have copies or minutes of ſuch admiſſions paying a reaſonable charge for writing the ſame; and ſuch books, &c. if demanded by ſuch candidate, &c. ſhall be produced by ſuch mayor, &c. at every election, and be referred to, in caſe of any diſpute touching the right of any perſon to vote.

This

This act does not extend to perſons who are entitled to their freedom of right by the cuſtom of the borough, who may be admitted at any time before the election, or even during the poll. So where honorary freemen have been duly *elected* or *preſented* at the proper court, or complied with ſuch ceremonies as the cuſtom of the place requires, a full year before the election, it is not neceſſary that their admiſſions *ſhould have been entered on ſtamps* twelve calendar months before, in order, to qualify them to vote. And if the admiſſion is entered on ſtamps, at any time *before* the vote is offered, although after the poll is begun, it is ſufficient, for ſuch perſon is completely poſſeſſed of his franchiſe, though the admiſſion cannot be evidence of his right until it is duly ſtamped. But if ſuch admiſſion is not ſtamped until *after* the vote is given, it is too late, for the returning officer would have done right in refuſing the vote; and the queſtion before the committee muſt be, Whether the vote ought to have been taken at the poll or not.

1 Dougl. Briſtol caſe.

3 Dougl. 173. Cardigan Caſe.

Admiſſions,

3 Dougl. 215. 3 Lud. 194.

If any queſtion is made upon the identity of the perſon polled, with the perſon of the ſame deſcription entered in the corporation book, the *onus probandi* ſhall be on the party objecting. When the right to vote depends upon freedom, and it is neceſſary in order to have the freedom, to have been admitted of any particular company, the entry in the book of the

Ib. 220.

1734, 20 Mar. 1737, 13 Mar.

the company is the proper evidence. Perhaps of all the rights of election there are none ſo exceptionable as this which extends to honorary freemen, who are occaſionally created to over-rule the voices of the reſident electors who ſeem to have the natural right of chuſing.

Where an integral part gone.

2 Dougl. 25. Helleſton Ca.

It is not neceſſary that a corporation ſhould remain complete and entire in all its parts, to exerciſe the right of voting: Thus in the *Helleſton caſe*, the mayor and all the aldermen, but one, were gone, and there were only ſix corporators left, one alderman, and five freemen; and yet it was held that they were capable of exerciſing the right of voting, which before was belonging to the corporation at large; and the petitioners who claimed under the remaining corporators, were ſeated by the committee againſt the election of the new corporation, the old corporators having never ſurrendered or waved their rights. And the ſeveral caſes of Bewdley, Plympton, and Durham, were cited upon the occaſion; where, though an integral part of the corporators was gone, yet the right of voting remained, and was actually exerciſed. But in December 1790, another deciſion prevailed. The old corporators had been reduced to one ſurviving perſon, who elected and returned two members to the ſheriff. The mayor of the new corpration created in 1774, alſo returned

16 Jour. p. 408. 16 Jour. p 352.

two

two members to the ſheriff, who annexed both returns to the writ. And on petitions on behalf of the parties intereſted to ſupport each return, the committee decided againſt the return of the ſurviving corporator, and in favour of the other return. Between the two deciſions, the right of the mayor, under the new charter, was tried in *quo warranto*, which virtually put in iſſue the exiſtence of the old corporation, it being on all ſides admitted that two concurrent corporations with equal powers could not exiſt in the ſame place, and the court of King's Bench decided in favour of the new charter. It will be difficult perhaps to reconcile the two deciſions of the committees, unleſs we recur to a difference urged in argument, viz. that in the latter caſe, the old corporators being reduced to *one*, it was impoſſible that *one* could be a corporation *aggregate*, which implies neceſſarily more than one. But perhaps it might be with more probability reſolved, by recurring to the principles upon which the caſe was decided in the B. R. and which are fully ſtated in the report of that caſe and were re-diſcuſſed before the committee.

3 Term Rep. 240.

Vid. 1 Fra. 1. & ſeq.

Where a place has ſent members to parliament, the right of election cannot be reſtrained or narrowed by any charter of incorporation granted by the crown to ſuch place; and though that charter is accepted and acted under

4 Inſt. 48.

under for many years together, yet if it can be ſhewn, that at almoſt any period there was a different and larger right of election, the old right ſhall be revived; and the new right, being illegal in its commencement, cannot be juſtified by practice: And therefore, in the Chippenham caſe, in the 21ſt Ja. I. a right of voting exerciſed under a charter granted in the 1ſt year of Queen Mary, was declared bad, being repugnant to the more extenſive and cuſtomary right exiſting before that period.

Glanv. 54. 142.

Rights popular.

Under the third claſs of rights popular, are included every ſpecies of right not falling within the other two. The moſt general and largeſt right of this kind is that which is comprehended under the words "Commonalty*," "Populacy" or "Potwallers," which mean much the ſame, unleſs particularly reſtrained by the text of a charter, by uſage, or an explanatory reſolution, as in the Seaford caſe, where the right of voting, which had been determined to be in the populacy, was afterwards, by an explanatory reſolution of the houſe, conſtrued to mean "*Inhabitants paying ſcot and lot.*" But in the Honiton caſe, "Populacy" was conſtrued to mean "Potwallers;" which in the Taunton caſe, is defined and agreed, by both parties, to be a right of voting exerciſed by "*all perſons*

Commonalty. Populacy.

2 Dougl. 19. 26.

Ib. 56. & 3 Dougl. 77. 3 Lud. 42. & ſeq.

Dougl. v. 1. 371.

* "*Commonalty*" ſometimes means part of a corporation. Vid. 2 Dougl. Poole Ca. throughout.

furniſhing

furniſhing their own diet, whether houſholders or lodgers:" And by the particular cuſtom of Taunton, they muſt have their ſettlement within the borough; but this, without ſuch cuſtom, ſeems not eſſential to the qualification. But perſons in a ſtate of ſervitude, as apprentices, cannot, as it ſhould ſeem, be entitled to vote. The general diſqualification of *alms*, however, muſt be always conſidered as tacitly excepted, if not expreſsly ſo, out of the general rule. The regulations under which the right of voting by freeholders of towns, &c. is exerciſed, has been ſtated before. The right of voting by "inhabitants," in the full and general meaning of the word "*inhabitants*" does not exiſt. Lord Coke comprehends within the word "inhabitant" every dweller, though he ſhould have but a perſonal reſidence, as ſervants, inmates, apprentices, unleſs ſpecially reſtrained by the context, as in the ſtatute of 22 H. 8. concerning the reparation of bridges. The expreſſion, therefore, of Inhabitants, is uſually modified and reſtrained to mean perſons paying "ſcot and lot," that is, to the pariſh rates, or to "houſholders;" and frequently both are added. Where the right is in "inhabitants paying ſcot and lot" by the ordinary rule the party muſt be both rated and pay, to be entitled to vote. Sometimes "*inhabitants*" are explained to be "*houſholders legally ſettled*," as in the Ilcheſter caſe, in Glanville,

Potwallers.

Inhabitants what.

6 Co. Rep. fo. 60.

2 Inſt. 703.

Vide 3 Dougl. Peterborough Ca. 81, 86.

Lud. 464.

Glanv. 107. 141.

Glanville, who (as we have before ſeen) lays it down that the common law right of election is in inhabitants houſholders *reſiants* within the borough, from whence, as well as from the words uſed in the Winchelſea caſe, it is plain, that Inhabitants and reſiant are not ſynonimous terms. In the recital of the 26th G. 3. c. 100. they are plainly diſtinguiſhed. By a ſpecial cuſtom indeed, perſons rateable only, and not rated, may have a right to vote; and there is alſo an inſtance of *owners* of real property rated, and paying, though *not occupiers* who have been determined entitled to the right of votihg; for though the rate, by the ſtatute, is directed to be made upon *occupiers* and *inhabitants*, yet if the party himſelf does not complain, but pays, and the uſage of the place annexes the right of voting to ſuch charge, it is ſufficient to eſtabliſh the iſſue before the committee, which is, Whether the voter has or has not the right of voting. And ſuch right is beſt proved by uſage. Theſe two laſt caſes muſt be conſidered as ſtanding upon particular uſage, and no general concluſions can be drawn from them.

Ib. 18. and the Pomfret Ca. 1 Dougl. 381. Vid. 3 T. Rep. 524.

Newark Ca. 1699, 1700. 11 Jan.

Dorcheſter Ca. 1 Dougl. 345. 43 Eliz. c. 2. S. 1.

26 G. 3. c. 100.

By the 26 G. 3. (*a*) No perſon ſhall vote as *an inhabitant paying ſcot and lot*, or as an inhabitant

(*a*) In Seaforth Ca. Mar. 1792. Mr. Luders and myſelf were of counſel for the returned members. After much argument, this act was conſtrued to extend "to inhabitant

tant houſholder, houſekeeper, and potwaller, or as an inhabitant houſholder reſiant, or as an inhabitant of a city or borough, unleſs he ſhall have been actually and *bona fide an inhabitant paying ſcot and lot*, or an inhabitant houſholder, houſekeeper, and potwaller legally ſettled, or an inhabitant houſholder, houſekeeper, and potwaller, or an inhabitant houſholder reſiant, or an inhabitant within ſuch city or borough *ſix calendar months previous to the day of the election*, * *at which he ſhall tender his vote*; and ſuch vote, if given, ſhall be deemed null

bitants, houſe-keepers paying ſcott and lot," (the then ſuppoſed right of voting at Seaforth) though the claſſes enumerated do not comprehend it—and the laſt proviſo expreſsly *excepts* all caſes, which require *a ſuperadded* deſcription.

Q. How is this to be done? For if you add the word "houſe-keeper" to the firſt claſs, you do ſuperadd a qualification, viz. of "houſe-keeper" which is againſt the direction of the laſt proviſo. And

2d. You by ſuch qualification deſtroy the right as ſpecified in the ſtatute; and conſequently only ſubſtitute a right *not expreſſed* for one that is expreſſed.

Therefore the conſtruction muſt be by inſerting *the whole qualification*; ideo quære.

* Conſtrued in the Seaforth Caſe—previous to the *firſt day of election*,—Q. For the Stats. in *pari materia* are progreſſive in accuracy. 10 Ann. c. 23. ſ. 1. Freeholder a year *before election*. 18 G. 2. c. 18. ſ. 5. & ſ. 3. Unleſs charged, &c. 12 months "next before" ſuch election. 3 G. 3. c. 15. to prevent occaſional freemen. Unleſs admitted 12 months before "*the firſt day*" of ſuch election. 3 G. 3. c. 24. before "the firſt day." 26 G. 3. c. 100. *ut ſupra* in the text. Mar. 1792.

and void, and he ſhall forfeit twenty pounds to any one who will ſue for the ſame. There is an expreſs exception of perſons acquiring poſſeſſion of any houſe by deſcent, deviſe, marriage, marriage-ſettlement, or promotion to any office or benefice, and a further exception of all perſons claiming to vote *under any other right than thoſe enumerated in the act.*

S. 2.

To the rule above laid down, that a perſon to be entitled to vote as an inhabitant paying ſcot and lot, muſt be legally rated, and pay to the poor rates, under the 43 Eliz. there are ſeveral exceptions. Thus, where two rates were made by two ſets of overſeers, appointed and confirmed by different juſtices in oppoſite intereſts, with a view to the election, the committee went into a diſcuſſion of the rateability of the perſons inſerted in ſuch reſpective rates. For though the committee might think none of them rated *de jure*, yet if they were rated *de facto*, and appeared to be rateable, it would have been unequitable they ſhould have loſt their right through any default in the appointment of overſeers. So where there is any fraudulent practice, or criminal partiality in the overſeers in making the rate, by deſignedly omitting perſons rateable, or inſerting perſons not rateable, with a party view, though the rate, in ſtrictneſs of law, may be a good one, not having been appealed againſt at the next general quarter ſeſſions of the peace, yet the

Where vote though voter has not been rated and paid 1 Dougl. 97. Milborne Port Ca.

2 Dougl. 296. St. Ive's Ca.

17 G. 2. c. 3.

the committee, as it ſhould ſeem, by the queſtion put to the counſel for the petitioners in the St. Ive's caſe, will look into the fairneſs of the tranſaction, in diſcuſſing the right of voting, and determine ſuch right according to the reſult of that examination. In the Seaford caſe the committee went into evidence of rateability, though there was ſufficient time to have appealed to the next quarter ſeſſions: But there the committee might think a ground of ſufficient miſconduct was laid againſt the overſeers, as in the St. Ive's caſe. From the whole of the Peterborough caſe, taken together, it appears, *the committee refuſed to go into evidence of rateability*, though they reſolved, that any evidence might be given to ſhew miſconduct relative to that rate. The inference from that caſe ſeems to be, *that ſome overt act of fraud* in the overſeers muſt be proved previous to, and as a foundation for, examining the rateability of a voter. The ſame principle was before laid down and acted upon in the Milborn Port caſe, 1781, where evidence to ſhew the voter had not *rateable occupation* was refuſed, there being no charge of criminal partiality proved againſt the overſeers. But in the Shaftſbury caſe in 1781, the committee, after many doubts, held that evidence might be admitted to affect the *fairneſs of the occupation*, though the voter had been often and uniformly rated for years,

3 Dougl. 19: Seaford Ca.

Peterbor. Ca. 3 Doug. 90. 144.

Phil. 254. 273.

Vid. 3 Lud. 130. notes.
3 Lud. 71. 96. & 130. notes.

and no appeal. In the 2d Seaford caſe evidence of rateability was rejected, becauſe the perſons omitted had not taken all the legal means they might of being put upon the rate. In Mar. 1792, upon the petition by Sir G. Webſter and Mr. Tarlton againſt the election of Mr. Sargeant and Mr. Joddrell ſome votes were objected to on the ground of the voters being too poor to be rated. But an appeal having been made to the Borough ſeſſions, upon the ſame ground, which affirmed their rateability, the committee refuſed evidence to ſhew they were not rateable. Objection was taken to ſeven other votes, for that the voters were *lodgers*, but as there had been no appeal on that ground the committee refuſed that evidence. There had been an appeal to the whole rate, which was affirmed at ſeſſions, and afterwards in the King's Bench: Objection was taken to 21 voters, who were inſiſted *not to be bonâ fide* inhabitants occupiers. And it appearing in evidence to the ſatisfaction of the committee, that theſe 21 voters did not fairly inhabit the houſes for which they were rated; ſome of them reſiding, as they had uſually done, out of the Borough with their families, and occaſionally only coming to ſleep in the Borough; ſome having a concurrent occupation with the old owners; ſome paying no rent for the houſes they occupied, which belonged to the leading

perſon

perſon in the Borough. Thoſe votes were ſtruck off as not being *bonâ fide* inhabitants houſe-keepers within the 26 G. 3. c. 100. If there be no time for an appeal (as it ſhould ſeem), or if the rate has been appealed againſt, and before the appeal be determined the election happens, as in the North Berwick caſe, the committee will go into the queſtion of rateability, will preſume every perſon rateable who is actually rated, and there is no appeal, and will not go into the queſtion of rateability. In this reſpect, they regulate themſelves not only by ſtrict law, and according to the rules of the court of King's Bench, which never will conſider an objection to a rate, after it has remained unappealed from at the quarter ſeſſions, but alſo according to the ſound rules of policy. For there would be no end of enquiring into the circumſtances of perſons rated, where the officers appointed by law, whoſe characters are unimpeached, have held them capable of paying to the rates. And the preſumption in favour of the rate is a legal preſumption in favour of perſons acting in their office, and receives a double ſanction, from no one queſtioning their act before the appellant juriſdiction. If the making of a rate be fraudulently deferred to exclude an occupier not before rated, perhaps a committee would conſider him as rated. If the latter rates are deemed fraudulent as being made for election

N. Berwick Ca. cited in Peterbro' Ca. 104.

Rex v. Weobly, Sha. 1259.

3 Lud. 100. &c ſeq.

purpoſes, the committee will decide by the laſt fair rate. The committee will examine fraud in making the rate, although it involve the conduct of the magiſtrates at ſeſſions, and will, for inveſtigating ſuch fraud, examine into facts which happened after the election that can throw any light upon ſuch inquiry. A houſeholder is the real and fair tenant of a houſe, as diſtinguiſhed from an inmate or lodger. But if he pay no rent, pretending ſo to do, and is reimburſed the rates by his landlord, he is not a fair houſholder.

3 Lud. 2. Seaford Caſe.

1 Fra. 319.

2 Fra. 453.

* Where a voter was two rates in arrear, and never

From my own notes.

* Dunſtone and Alfry had often been aſked for their rates and had not paid; they had two in arrear. Cryer went round a few weeks before election was expected to come on to give public notice to perſons in arrear to pay their rates. Upon the 2d day after the poll began, one in like caſe having been rejected at the poll as not having paid, they went (in company with an agent of the petitioner) to the houſe of the overſeer, who was up ſtairs in bed, (without fraud) and offered their rates to the wife, who declining to take it, they left the money on the ſhelf. The Overſeer ſwore he knew nothing of it till ſeveral days after.

They tendered their votes and were admitted, and committee held the votes bad.

Anſtin, another, who kept wine vaults, and generally lived out of the Borough, had been frequently aſked for his rate, and had not paid, but ſaid he had paid the other overſeer, which was not true. He put down his rate upon the table at time of tendering his vote, was admitted

never tendered payment of his rate until the day after the poll began, and then to the wife of the overſeer, and in the preſence of the agent of the petitioners for whom he meant to vote, the vote received at the poll was held bad by the committee. So where another had never paid, and put it down on the table at the time of tendering his vote, though a man of ſubſtance, his vote was rejected by the committee. But where the overſeer had ſaid he would call for the rate, but did not, the vote was held good, though he had not paid. And where one paid 7s. 6d. only being rated at 8s. inſiſting he was over-rated, but did not appeal, the vote was held good. *

A rate, though *private*, and not made at a veſtry, is a legal rate. Tawney's Ca. Ld. Raym. 1009.

If a voter having a right in one character to vote, and ſuppoſes he has a right alſo in another character, and votes in the latter cha-

mitted and held vote bad by committee, though admitted on all hands to be a man of ſubſtance. Ibid.

Okendon was in arrear, but on the public notice paid one rate at the place appointed, and ſaid he did not know he was two in arrear. Overſeer ſaid he would call on him, but never did ſo as *to ſee him*; and voter having been ready to pay at time of polling, the vote which had been admitted was held good; it being conſidered as the laches of overſeer, after ſaying he would call. Ibid.

* Q. Shall he take the law into his own hand?

racter, the vote is held bad. The caſe was, (*a*) Mr. Serjeant Kemp being a *freeman* of Seaforth, and being alſo an inhabitant houſekeeper, paying ſcot and lot. When he tendered his vote, he ſaid, "I vote as a *freeman* and make the beſt of it." The committee decided that freemen had no right, and therefore rejected Mr. Serjeant Kemp's vote as bad, being given in exerciſe of a ſuppoſed right which turned out bad, though as an inhabitant, &c. he had a right to vote.

Seaforth Caſe, Mar. 1792.

Harben, another voter, ſaid, "He voted as a freeman." It did not appear in evidence whether this was ſaid *at* or *after* the time of voting. The vote was held good.

Ibid.

If there be any peculiar or anomalous right of voting, which does not fall within theſe claſſes, of which I have taken no notice, it will appear in the Appendix of the rights determined.

Rules of conſtruction on laſt determinations.

Before I cloſe this chapter, it may be proper to add ſome remarks, and to endeavour to lay down ſome general rules of conſtruction, upon the determinations themſelves, where

(*a*) Q. The deciſion as to Kemp's vote, for the declaration does not ſeem to ouſt him of the benefit of the right he had, though he wiſhed to refer it to another ſuppoſed right. The execution of a power (though it is a diſpoſition of property, not merely the exerciſe of a favoured franchiſe) may be referred to any authority that will make it good.

they

they are ambiguous, or upon ſuch reſolutions as have been made by committees upon the meaning of the laſt determinations. Every laſt determination of the houſe of commons, upon the right of election, as we have before ſeen, and now the reſolution of a ſelect committee, under certain regulations, is by act of parliament made concluſive, and nothing but another ſtatute can alter the right ſo declared. To have been a laſt determination (before the 28 G. 3. c. 52.) it muſt have been an expreſs reſolution of the houſe itſelf, or expreſsly adopted from the committee. For where the committee reſolved the right to be in the "commonalty" (in the Poole caſe), and the houſe diſſented, and reſolved that ſir N. N. who was elected by the "burgeſſes of the corporation," was duly elected; on a ſubſequent litigation, it was contended, that the diſſent and adjudication upon the former election, were equivalent to a laſt determination upon the right itſelf. But the committee let in evidence of the uſage, which they would not have done if they had conſidered it a laſt determination, there being no ambiguity which required explanation by ſuch evidence. A laſt determination ſhould be ſo clearly and accurately laid down, that no reaſonable doubt can ariſe upon the conſtruction of it. If there is any ambiguity upon the face of it which will admit of two meanings, the trúe conſtruction muſt be found out before the rule can be

Doug 79.

Laſt determination, what.

2 Dougl. 223.

Muſt be expreſs.

be aſcertained. According to the ordinary rules of conſtruction, ſuch an ambiguity *patent* ariſing upon the face of the determination, can be reſolved only by the rules of grammar, and no evidence of practice under the determination can legally be adduced to conſtrue the meaning of the determination itſelf. For this is not like the caſe of two perſons contracting in written terms under which the parties afterwards act, where, if any queſtion ariſes upon the meaning of the contract, the conduct of the parties is ſuffered to be given in evidence. In ſuch caſe, the queſtion is not upon the abſtract meaning of the inſtrument, ſo much as upon the meaning of the parties themſelves, who have affixed and acted upon their own interpretation. But as the ſoundneſs of the conſtruction itſelf, in ſuch reſolutions or determinations, is not of ſo much conſequence as the abiding by a conſtruction when once made, evidence is permitted to be given of uſage, to explain an ambiguous determination of the right; but, by a ſtanding order of the houſe, not to contradict it. And where a conſtruction has been put upon a laſt determination by a *committee* in the ſhape of a reſolution, evidence might be given not only to explain ſuch reſolution, if it were ambiguous but, as it ſeems, even to contradict it. § And if any particular uſage, conſiſtent with the determination or reſolution, be proved to have exiſted

16 Jan. 1735-6. Jour. v. 25. p. 458.

3 Dougl. 36. Seaford Ca.
2 Dougl. 223. Poole Ca.
1 Dougl. 377. Pontefract Ca.
§ Contra. 3 Lud. 56.

exiſted for a conſiderable period of time paſt, mere ſurmiſe and implication, drawn from old returns, which are very fallacious evidence, as depending upon the legal accuracy of the returning officer, ſhall not over-rule it; but the clear, though modern evidence, ſhall prevail. It is a principle of conſtruction to extend rather than to narrow the right of voting in favour of the franchiſe. The earneſtneſs of the legiſlature, and of the houſe itſelf, to reduce the law of elections to a regular ſyſtem, aſſiſted by the indefatigable ſpirit and integrity of the committees, which have hitherto ſtood proof, and will, it is hoped, continue to do ſo, againſt the injuſtice ariſing from party-zeal, has already produced the moſt ſalutary effects, and has put the rights of the conſtituent body almoſt beyond the reach of oppreſſion.

Glanv. 35. 56.

CAP. IV.

Of the iſſuing of the Writ; the Execution and Return thereof.

HAVING, in the preceding chapters, conſidered the riſe and progreſs of parliamentary repreſentation, who are capable of being elected, and who of electing, to a ſeat in parliament; I come laſtly to conſider the mode of election. And in order to give a compleat view of the ſubject, it is neceſſary to inveſtigate the whole of the proceeding, from the warrant for iſſuing the writ to the return of it into chancery.

Of calling a parliament.

The calling of the parliament into actual exiſtence, depended originally entirely upon the will of the crown. The convention parliament, and the parliament at the revolution, were ſelf-erected, the throne being vacant, and aroſe from neceſſity, which ſuperſedes all law. The parliament originally was ſummoned *pro re natâ*, merely for a particular purpoſe generally that of aſſeſſing an aid or ſcutage, and was then immediately diſſolved, and ſummoned no more till the neceſſities or the humour of the crown again impelled or induced it to exert its prerogative. But as there were privileges as well as burdens annexed to this attendance; and amongſt others, none ſo valuable

Vide 1 Bl. Com. 151.

& 3 E. 2. Pryn. Par. Red. 2d part, p. 68.

luable as that of laying the grievances of the people before the throne, and ſeeking redreſs for them, it ſoon became an object of importance to the people to ſecure a periodical convention, in which their repreſentatives might exert that privilege. This, therefore, occaſioned a very early ſtatute, by which the crown was bound to call a parliament once at leaſt in every year; and this having been attended to with leſs punctuality than was conſiſtent with the general liberty, occaſioned a ſecond ſtatute to the ſame effect, in the ſame reign.

4 E. 3. c. 14.

See Debates by Debrett 1745. vol. 1. p. 432. & ſeq. 475.

26 E. 3. c. 10.

Theſe ſtatutes did not, as is commonly ſuppoſed, limit the duration of the parliament to one year, but only regulated the time of intermiſſion. There was no particular period fixed for their duration. Thus it remained till a much later and more active period of our hiſtory, when the duration of parliament was extended to three years, unleſs diſſolved ſooner. But this ſtatute was afterwards repealed, though by the ſame repealing ſtatute the intermiſſion between any two parliaments was extended from one to three years, but limited ſo as not to exceed the latter period. Soon after the Revolution, however, the duration of parliaments was again extended to *three years*, unleſs diſſolved ſooner; and as the policy of the country became enlarged, and required additional vigour and conſiſtency, which was not to be expected from ſo frequent a change

16 Car. 1. c. 1. repealed by 16 Car. 2. c. 1.

6 W. & M. c. 2.

change of the great council of the nation, the existence of parliaments was lengthened to seven years, subject to an earlier dissolution by the crown. But the period of intermission continued limited to three years. As the law therefore now stands, the crown must summon a parliament before the expiration of three years from the dissolution of a former one. When the crown has determined to call a parliament, a warrant or bill issues, signed by the king, and addressed to the lord chancellor or keeper of the great seal, directing him, upon the receipt thereof, to cause such and so many writs to be made and sealed, under the great seal, as has been used and accustomed. Upon this authority the writs are made out and issued; and in order to prevent delay or cabals, and to preserve uniformity throughout the kingdom, the chancellor is required by statute to issue the writ with as much expedition as may be; and that there may be due time for proper choice, it is expressly enacted, that there shall be forty days between the teste and return of the writ. This time was settled probably by analogy to the practice established by the charter of *King John*, whereby it was agreed, that the prelates, nobles, and barons of the realm, should be summoned to council forty days before the time of their meeting. But the *issuing* of the writ by the chancellor is only upon the

1 G. 1. c. 1.

Warrant for issuing of writ on general election. Vic. Appendix.

7 & 8 W. 3. c. 25.

the firſt ſummons of the parliament; for when the parliament is ſitting, ſo jealous is it of its privileges, that it takes the power of iſſuing the warrant for the writ in its own hands. Formerly, when the conſtitution was yet in an unſettled ſtate, the iſſuing of the writ was regulated entirely by the lord chancellor. But ſo early as in the year 1580-1, when perhaps the prerogative was at the higheſt, the commons reſolved, "that during the *ſitting of* "*this court* there do not, at any time, any "writ go out, for the chooſing or returning "of any knight, citizen, burgeſs, or baron, "without the warrant of this houſe, firſt di- "rected for the ſame to the clerk of the "crown, according to the ancient juriſdic- "tion and authority of this houſe, in that "behalf accuſtomed and uſed." This apparently confined the power to the actual ſitting of the houſe, and left the chancellor to iſſue them, during the receſs of parliament; but in 1672-3, the houſe reſolved the meaning of the former reſolution to be, that from *the firſt day of ſitting, whether actually ſitting or not*, the houſe had the power of ordering the writ to iſſue, and it has always exerciſed the right ſince that time. And in order the better to ſupply any vacancies that may happen during a prorogation or an adjournment, and that the full number of members may be preſent at its meeting, and partly to prevent long conteſts, it is provided by ſtatute, that if the

On vacancy.

18 March 1580-1.

D'Ewes. p. 307.

6 Feb. 1672-3.

Grey's Debates, v. 2. p. 6.

By death. 10 G. 3. c. 41.

During receſs.

the houſe be prorogued or adjourned for twenty days or more, and a member dies during the interval, on certificate thereof in writing from two members, the ſpeaker ſhall make out his warrant to the clerk of the crown to iſſue a new writ, having firſt given fourteen days notice of his intention in the London Gazette.

15 G. 3. c. 36. But as this was unneceſſary where there were not fourteen days to come to the next meeting of parliament, it was enacted, that ſuch writ need not iſſue, unleſs fourteen days would expire from the time of delivering the certificate, before the next meeting; and as vacancies by peerage during the intervals of parliament were unprovided for, it is by the laſt mentioned act alſo ordained, that on a prorogation or adjournment of twenty days or more, the ſpeaker, on certificate in writing, ſigned by two members of any vacancy by a member of the houſe becoming a peer, ſhall iſſue his warrant for a writ, giving fourteen days notice, as in caſe of death, if there are fourteen days to run from the time of delivering the certificate to the meeting of parliament. Where the writ has iſſued improperly, on a ſuppoſition that a member was dead, who in fact was not, or where directed to the ſheriff of one county only, the borough lying in two counties, or where one of the returning officers was dead, and there was not time for the election of another, the houſe has ordered

Unleſs within fourteen days of the meeting.

ſ. 2.

By peerage.

Superſeding the writ.

Journ. 14. p. 63.

Ibid. p. 88.

dered the meſſenger of the great ſeal to forbear delivering the writ, or a ſuperſedeas to iſſue: ſo where the writ was directed to the ſheriff of a wrong county. But where the writ was directed to the bailiff and *burgeſſes*, the bailiff being only the lord's miniſter, and not the returning officer, and the right of voting being in the *burgh-holders*, and not in the burgeſſes at large, yet the miſdirection was held not to vitiate the writ; and though delivered to *another*, and not to the bailiff and the burgh-holders, yet the election, under the writ ſo miſdirected and delivered, was held good; and where a particular place by its corruption or otherwiſe, has incurred the diſpleaſure of the houſe, the iſſuing of the writ is often ſuſpended by order of the houſe, as in the Hindon and Shaftſbury caſes; and this power the houſe has uſed for a long ſeries of time.

For miſdirection. 1 Dec. 1702.

Where not.

Glanv. 38. Blechingly Ca.

Suſpending the writ.

4 Dougl.

As the meſſenger of the great ſeal is reſponſible for the due delivery of the writ, any one may have the carriage of it to whom he chuſes to entruſt it; and where it was moved to be a contempt to have truſted the carriage of the writ to a candidate, it was reſolved in the negative; but it is expreſsly provided, that it ſhall be *delivered* to the proper officer to whom the execution of the writ belongs, and to no other: and where the writ has been delivered to the candidate himſelf, the party de-

Carriage of it.

18th Jan. 1721.

7 & 8 W. 3. c. 25.

Delivery of it. 19 Journ. p. 709.

livering it was committed by the houſe.

Ibid. p. 726. Where the precept was delivered to two burgeſſes, who were not conſtables of the borough, the party delivering it was committed.

County palatine. In the counties palatine, the writ iſſues to the chamberlain, his lieutenant or deputy, who

34-5 H. 8. c. 13. makes his precept to the ſheriff; and in that of Durham it iſſues to the biſhop or his chancellor. In the cinque ports the writ is directed to the warden, except for the election at Dover, where it is delivered to the conſtable of Dover.

County elections, when by writ. In county elections, the writ no farther directs the time, place, and manner of election,

7 H. 4. c. 15. than by the following words: "Proclama-"tion being made, &c. in your next county "court, to be holden after the receipt of this "our writ;" and "that the election in your "full county ſo made diſtinctly and openly, "under your ſeal and the ſeals of thoſe who "ſhall be preſent at ſuch election, you do "certify to us in our chancery at the day and "place aforeſaid, without delay, remitting "to us one part of the aforeſaid indenture, "annexed to theſe preſents, together with "this writ." But a great latitude being left

By ſtatute. in the ſheriff as to the execution of it, made it neceſſary to preſcribe *the time* of his proceeding to election, ſo as to inſure its being done *openly*, and therefore he is directed by

23 H. 6. c. 14. ſtatute to go to election between eight and

Between 8 & 11. eleven in the morning. As the law then ſtood,

ſtood, the ſheriff was compellable to proceed to election *at the next county court*, however ſoon it might be after the receipt of the writ which ſometimes prevented due notice being given to the freeholders; and therefore it was qualified by enacting, that if the next county court happened *on* the day, or *within ſix days after* the day of receiving the writ, then the ſheriff ſhould *adjourn the ſame court*, giving ten days notice of the time and place of election; and that the election ſhould proceed *de die in diem*, till all the freeholders preſent have polled, and ſhould not protract the election by unneceſſary adjournment. And the time of adjournment not having been particularly ſpecified by the former act, was afterwards expreſsly limited to *ſixteen days and no longer* *. But by the 25 G. 3. this time is narrowed. The ſheriff is thereby required, within *two* days after the receipt of the writ, to cauſe proclamation at the uſual place of election, of a *ſpecial court* to be holden there for the purpoſe of ſuch election only, any day except Sunday, not later than the ſixteenth day, nor earlier than the tenth, from the day of making ſuch proclamation, and to proceed then and there as at a county court, or adjourned county

7 & 8 W. 3. c. 25. ſ. 3. Adjournment of county court.

Ajournment limited to 16 days. 18 G. 2. c. 18. ſ. 10.

25 G. 3. c. 84. ſ. 4.

Where.

* In Yorkſhire, to give the freeholders time to aſſemble on the day of election, without breaking in upon the Sunday, it is directed that the county court ſhall be held on a *Wedneſday, and on no other day*. It uſed to be held on a Monday. 7 & 8 W. 3. c. 25. ſ. 9.

court, under the laws in being. The place of election, which muſt always be a circumſtance of great importance, was left entirely at the diſcretion of the ſheriff himſelf, who ſeems formerly not to have been reſtrained from holding his court where he pleaſed; and therefore it was enacted, that the county court

7 & 8 W. 3. c. 25. ſ. 3.

ſhould be held *at the moſt public and uſual place of election* within the county, where it hath been uſually held *for forty years laſt paſt*. And the ſheriff is thereby forbid to adjourn the court to any other place, without conſent of the candidates. But, in the county of Hampſhire, he may adjourn from Wincheſter,

Ib. ſ. 10.

to Newport in the Iſle of Wight, at the requeſt of *one* of the candidates. And ſo eſſential is the place of election preſcribed by the ſtatute, that when any particular circumſtance requires a variation, the legiſlature itſelf muſt interpoſe to authorize it. Therefore, during the laſt war, there being priſoners ſtationed at

20 G. 3. c. 1.

Wincheſter, who required a guard, and the ſoldiery being, by other ſtatutes, ordered to be removed during the election, it was enacted that the election ſhould be held at New Alresford, and not at Wincheſter.

When and how the poll taken in counties.

The writ having been delivered to the ſheriff, as before directed, and the other requiſitions of notice, time, and place being complied with, if the election be not determined on a view, the ſheriff, if required, muſt take the poll.

But

But previous thereto he is required by ſtat. immediately after reading the writ or precept for the election to take and ſubſcribe an oath, that he is not bribed and that he will make a fair return. 2 G. 2. c. 24. ſ. 3. See the oath in the Appendix.

And by the 25 G. 3. it is enacted, that the poll ſhall commence on the day demanded, or on the next day, unleſs Sunday, and then upon the following day, and not to continue more than 15 days, Sunday excepted; and the poll is thereby required to be kept open each day during its continuance, for ſeven hours at leaſt, between the hours of eight and eight; and for the better taking of the poll, the following regulations, enacted by ſtatute, muſt be complied with. The ſheriff, or, in his abſence, the under ſheriff, with ſuch others as he ſhall depute, ſhall *forthwith* proceed to take the poll. The clerks are to take it in the preſence of the ſheriff or under-ſheriff, or ſuch as ſhall be deputed; and the ſheriff, or under-ſheriff, ſhall ſwear the clerks truly and indifferently to take ſuch poll, and to ſet down the *name* of the freeholder, the *place* where his freehold lies, and *for whom* he is polled. And that the candidates may be properly guarded againſt any impoſition, it is thereby further enacted, that the ſheriff, or, in his abſence, his under-ſheriff, ſhall appoint, for each candidate, ſuch one perſon as he ſhall nominate, to be inſpector of every 25 G. 3. c. 84. ſ. 1. S. 3. 7 & 8 W. 3. c. 25. ſ. 3. Clerks. Inſpectors.

every clerk appointed to take the poll. And in order to facilitate the poll, and to prevent confuſion, it is enacted, that booths ſhall be erected at the expence of the candidates, proportioned to the hundreds within the county, not exceeding fifteen in number, and a clerk ſhall be appointed to take the poll at each booth. And liſts ſhall be made out of the towns, villages, pariſhes, or hamlets, in the hundred, rape, or diſtrict, a copy whereof ſhall be delivered to each candidate on requeſt, and *none are to vote for lands lying within any other hundred*, town, pariſh, &c. except in thoſe mentioned in the liſts of ſuch booth, unleſs ſuch lands lie in ſome place not mentioned in any of the places within any of the liſts.

Voting by the hundreds.

Gloſterſhire Ca. 120.

In the Gloſterſhire caſe, objection was taken to the vote of a freeholder who had voted in a booth, for a freehold not lying in the diſtrict contained in the liſts of that booth; but as the poll clerk had taken his vote, the committee would not ſet it aſide. But where he tendred his vote in the wrong booth, and he thought it was taken down, but in truth it was not, and he was told to go to the hundred of *W.* to vote, which by miſtake he did not do, the committee rejected it as a vote.

2 Lud. 420.

Where the entry of the vote was in a wrong pariſh, and was given in a wrong booth, the vote was rejected though parol

parol evidence was allowed againſt the poll book and check book as to what pariſh he had named.

Where the voter had given in his freehold in one hundred or pariſh at the poll, he was not allowed to ſupport his vote before the committee, by proving it in a different hundred and pariſh.

Gloſterſh. Ca. 178. 2 Lud. 416.

In cities which are counties of themſelves, there are particular regulations alſo to be obſerved at the taking of the poll, which have been before mentioned pretty much at large; and the ſheriff is there alſo directed to allow a cheque-book for every poll-book, for each candidate, to be kept by the inſpector.

19 G. 2. c. 28. Cities, counties of themſelves.

N. B. *City of London* 11 G. 1. c. 18. *City of Norwich.* 3 Geo. 2. c. 8.

For the election of citizens and burgeſſes, the writ itſelf does not iſſue to the returning officer, but to the ſheriff, who ſends his precept, under his hand and ſeal, to the returning officer within the city and borough (wherein by reaſon of the local juriſdiction he cannot interfere), directing him to comply with the ſubſtance of the writ,—which is ſhortly ſet forth. Lord Coke obſerves, what indeed neceſſarily follows from the ſtatute of 23 H. 6. that if the city or borough elect before the receipt of the precept, ſuch election is nothing, and they muſt proceed to the election again after the delivery of the precept.

Iſſuing of the precept.

Vid. 4 Burr. 2270.

4 Inſt. 49.

and 7 H. 4. c. 15.

The ſheriff being originally under no ſpecial or expreſs regulation, uſed frequently to de-

tain the writ, and neglect to iſſue the precept, and often would take upon himſelf to make the return of citizens or burgeſſes as elected, when in truth there had been no election.

23 H. 6. c. 34.

This, therefore in the reign of H. 6. was remedied by a ſtatute, which recited, amongſt other things, that the ſheriff often embezzled the writ, and forbore to make out his precept to the returning officer, under colour of the words of the writ "*Quod in pleno comitatu*," &c. "*duos burgenſes*," &c. and enacted, amongſt other things, that after the receipt of the writ, he ſhould iſſue his precept to the mayor or other returning officer. But this ſtill leaving the time indefinite, it was afterwards expreſsly enacted, that the ſheriff ſhall iſſue his precept *within three* days after the receipt of the writ, and deliver, or cauſe the ſame to be delivered, to the proper returning officer, and no other, who is to indorſe the date of the receipt thereof in the preſence of the perſon delivering it. In the cinque ports, the time was ſoon after enlarged for iſſuing the precept to ſix days.

Precept.

7 & 8 W. 3. c. 25.

10 & 11 W. 3. c. 7. ſ. 2.

Cinque ports.

When.

The returning officer of the city or borough was formerly under no particular direction of *time* or *place* for proceeding to the election, provided he was ready to make his return within the time required by the writ. By the ſtatute of H. 4. he was directed "*After the receipt of the precept from the ſheriff, and convenient notice of time*," to cauſe to be elected, &c.

7 H. 4. c. 15.

The

The uncertainty and partiality ariſing from this latitude, made ſome regulation neceſſary, and it was therefore enacted, that he ſhould proceed to the election *within eight days* from the receipt of the precept, giving four days notice thereof. 7 & 8 W. 3. c. 25. Notice of Election.

The notice ſhould expreſs the purpoſe of meeting, as well as the time and place, and muſt not be for a meeting *generally*. In the Stafford caſe, the writ was produced by ſurprize, at a meeting held for other purpoſes, and the election proceeded to without further notice. One of the members returned was elected by a great majority, and his election not complained of. But there being a petition againſt the election of the other member returned, and it appearing that the election had been made without proper notice to the electors, the houſe ſet aſide the whole proceedings, and ordered a new writ. In the Blechingley caſe, where there was no certain returning officer, no formal notice was held neceſſary, but the notoriety by communication of one burg-holder to another was held ſufficient. In ſome places, by particular cuſtom, notice is given by ringing a bell, or blowing a horn, and generally, where there is no ſuch cuſtom, by a public proclamation within the borough, and ſufficient notice is in all caſes to be preſumed, until the contrary be ſhewn. A want of notice cannot be cured by a conſent of the candidates Glanv. 19, 26, 68, 72. 8 Journ. 76, Hilſton Ca. Ib. 38. Ib. 64. Glanv. 98. 3 Lud. Seaford Ca. 1. Ib. 30. Bridport Ca. cited and Chicheſter Ca.

candidates to take the poll without. Notice on the 27th to proceed to election the 30th is bad. But to proceed on the 5th day from the notice is good, and the notice may be upon Sunday, ut videtur.

Where.

The place of election muſt be within the diſtrict, and ought to be in the guildhall; and though there is no ſtatute making that neceſſary, yet if it were held in any other place, contrary to the uſual courſe, which ſhould occaſion a prejudice to any of the candidates, it would, I preſume, make the election void. In Wales the election is directed to be held at ſuch *lawful and reaſonable* place as ſhall be aſſigned by the mayor; and this reaſonableneſs would now probably be conſtrued a conformity to uſage. The ſheriff, or returning officer, having thus far completed the preparations, muſt forthwith proceed to the election. If returning officer die during poll, his ſucceſſor may execute and finiſh.

Vid. 3 Lud. 27. & ſeq and the caſes there cited.

35 H. 8. c. 11. ſ. 3.

Returning officer.

1 Dougl. 113, 138.

4 Cem. Dig. 29.

To thoſe whoſe habits of life have not led them to great preciſion and accuracy of language, the word "Election" ſeems plain enough. The merits, however, of the Briſtol caſe turned principally upon the meaning of this expreſſion. For there it was contended, that the view of the voters *preſent at the proclamation* muſt, from the terms of the writ, be conſidered as determining the election, and that the poll is but an examination of that view by the numeration of voices, and is in fact a ſcrutiny.

Election, what.

1 Dougl. 245.

Vid. the writ in the Appendix.

ſcrutiny. The conſequence intended to be drawn from this poſition was, that Mr. B. not having been nominated a candidate, nor any poll having been demanded for him, till *after the day of proclamation*, he could not be eligible, becauſe the *election* was over. Another conſequence which neceſſarily flowed from this doctrine was, that none but the voters *preſent at the proclamation* could have a voice in the election. The practice, independent of any conſtitutional reaſoning, was uniform in both the conſequences, againſt this conſtruction. For inſtances abundant were produced, to ſhew that the two members might be elected at different times, and at a conſiderable interval from each other; and that there never was a period when it was ſuppoſed that none but thoſe actually preſent at the time of proclamation could vote. Indeed, if we conſider at how early a period the writ was formed, when the election was determined without any conteſt, by the ſhout of the ſuitors, arguments upon the phraſe of the writ cannot, in ſuch a caſe have much weight.

Vid. Glanv. 103. 1 Dougl. 248 to 253.

"Election" is a "*choice by the major part of thoſe who have a right to chooſe*," and who exerciſe that right. If the electors are unanimous, or but a few diſſent from the choice of the larger number, it is eaſy to determine the election upon the view. So if there be no competitor to diſpute the choice, nor any propoſed,

poſed, there can be no doubt who is the perſon elected, though ſome, or even the larger part of the electors, do not give their voices.

But the inſtant a party intereſted in the competition diſputes that choice as appearing upon the view, however clear the majority of the view is in favour of the rival candidate, ſuch perſon is entitled to try the queſtion by the numeration of voices, the only certain way of finding the truth. Taking the voices, or numbering the votes man by man, therefore, is called the "poll." And until the larger part of the voters *preſent* (i. e. at any time during the polling) have concurred in their *choice*, the election itſelf is not determined; the "election," therefore, is the reſult of the "poll." Theſe words are ſometime inaccurately uſed to mean the ſame thing; and ſome acts of parliament have looſely adopted them as ſynonymous terms. The returning officer having made the regulations aforeſaid, and having taken the oath (ſee Appendix) before a juſtice of peace, if any preſent, and if not, before any three of the electors, proceeds to take the poll. In taking the poll he muſt permit no voter to vote twice; if he does, the ſecond vote is, in county elections, declared void by the legiſlature. The rule is the ſame whether the voter hath two voices to give, as upon two vacancies, or one only; for he cannot exerciſe his franchiſe piece-meal. Were the

Glanv. 106. 73. 74.

Vid. Plow. Com. p. 126.

Vid. 7 & 8 W. 3. c. 25. ſ. 3. 10. Ann. c. 23 ſ. 5. & 18 G. 2. c. 18.

18 G. 2. c. 18. ſ. 5.

1705. 8 Feb.

the contrary ſuffered, it would introduce the utmoſt confuſion. But he is not ſo bound by the acts of the poll clerks, as to be obliged to abide by the poll-book, if, after the vote has been reduced to writing, it appears there was a miſtake, in taking it down for a wrong candidate. There ſhould however, be the utmoſt caution uſed before ſuch an alteration is made, and very clear evidence to juſtify it; for the poll clerk is ſworn, and his book, whilſt it remains unaltered, is the beſt evidence of the vote *. This doctrine is proved by a very extraordinary caſe of recent memory, where, upon a county election, the merits of the cauſe turned upon the admiſſibility of evidence, to ſhew the poll clerk's miſtake in having put down one vote for the ſitting member, which, in fact, was given to the petitioner. And the *check* books of each candidate's inſpector agreeing together, and correſponding with parole evidence of the fact, in contradiction to the clerk's poll-book; and it appearing alſo in evidence, that application had been made during the poll to rectify the miſtake, which the ſheriff had declined doing; the committee held, that the book ought to have been rectified, and

Where the poll may be rectified.

Bedfordſh. Ca. Lud. 375.

* But not the only evidence; for parol evidence has been admitted to prove for what property a vote was given, though no proof of the poll-book's being deſtroyed or loſt, nor any notice to the other ſide to produce them. Lud.

that

that the petitioner ſhould have been returned; and the return was amended accordingly. But where there had been a miſtake, as was alledged, in the taking down of another vote, the inſpector's book agreeing with the poll-book, and no application having been made expreſsly during the poll to rectify the miſtake, the committee would not let in ſuch evidence. This determination was in the firſt Bedfordſhire caſe. Where the queſtion was only upon the *return*. Afterwards the return being amended upon the deciſion of the firſt committee by ſubſtituting Lord Ongly, inſtead of Mr. St. John on the return this queſtion was again agitated. And the committee received parol evidence that Ayres the voter had voted for Lord Oſſory, and St. John, though his vote was taken down by the poll clerk for Lord Oſſory only. The voter himſelf after other parol evidence was admitted to prove how he had given his vote, though by the former committee he had been rejected. Both check books in this caſe *confirmed* the poll book.

Where not.

Lud. 376.

1 Lud. Admitting evidence againſt the poll book.

2 Lud. 404.

The ſame evidence was admitted in another caſe of the ſame kind, but there the check books agreed with the parol evidence *againſt* the poll book. And in another caſe where the freehold was ill deſcribed upon the poll book, the voter was admitted to prove, that he had deſcribed it *differently* at the poll, without

Ib. 408.

without any evidence to confirm him, and the check books *confirmed* the poll book. The same evidence was admitted under like circumstances, on another vote on the sole testimony of the voter against the poll book confirmed by the check books but the committee disallowed the vote. Ib. 410. & Ib. 499.

Where the freehold was entered as at H. (which was under 40 s.) parol evidence was admitted that voter described it as at H. and *S.* and the vote held good,—the voter was not examined. The same evidence was admitted under like circumstances on another vote, Ib. 412.

though the check books confirmed the poll book. Ib. 413.

So where the description entered was for *house and land*, in occupation of *A.* who in fact occupied the house and curtilage *only*, which was 30 s. per annum, and the *adjoining field* meant by the description value 20 s. per annum was in occupation of *B.* yet the vote was held good. 2 Lud. 417.

Parol evidence that voter added "for his salary out of &c." and the name of the tenant. 2 Lud. 499.

And where the *check* books agreed with the poll-book, the *voter himself* was not suffered to give evidence to contradict the poll. In the Glocestershire case, the poll-clerk not having entered the voter's name with the "jurat," the committee nem. con. after argument, suffered the *inspector* to give evidence of his having 1 Lud. 139. Glostershire Ca. p. 162.

having been ſworn. Where the entry in the poll-book was of a pariſh different from that in which the voter's freehold lay for which he had voted, the committee would not admit evidence to *contradict*, though they did to *explain* it. And this is conſiſtent with ſimilar reſolutions in former caſes. In the Bedfordſhire caſe, in 1710, a third perſon was not permitted to prove the voter had voted differently from what appeared in the ſheriff's poll; and in the Rutlandſhire and Southwark caſes, the voters themſelves were not admitted to give ſuch evidence. What is here ſaid relating to taking the poll in writing, muſt be underſtood of counties only, and of towns or cities counties of themſelves; where, by the 6th ſection of 19 G. 2. c. 28. a poll in writing is implied by the proviſion "to allow a cheque-book for every poll-book for each candidate." There is no ſtatute requiring a *written poll* in boroughs, towns, or cities, not counties; though in the ſtatute the returning officer, under the penalty of 500 l. is required to give copies of the poll taken at ſuch election. But as Mr. Luders obſerves, in ſo penal a caſe, this would probably be confined to copies *when the poll was taken in writing*. Perhaps however, uſage may have eſtabliſhed the rule. And by the 25 G. 3. reciting the expediency of poll-clerks being ſworn, which is not authorized, except at county elections, and particular places,

Fo. 139. Miſ-entry of the pariſh.

1715. 14 July.

1710. 20 Jan. 1735-6. 10 Feb.

Written poll in towns.

Lud. 319.

25 G. 3. c. 84. ſ. 7.

places, it is enacted, that in every city, borough, or place, every perſon whom the returning officer ſhall retain to act as a clerk in taking the poll, ſhall, before the commencement of the poll, be ſworn to do his duty in ſuch manner as therein preſcribed. The poll being ended, and the numbers caſt up, if the returning officer is perfectly ſatisfied without a ſcrutiny, he declares the election according to the majority of votes. By the 28 G. 3. c. 36. ſ. 22. in county elections, the ſheriff is directed to caſt up the votes *without delay*, and cauſe them to be publickly declared. If it appears that there is an equality of votes, the returning officer has not a caſting voice. And in the Winchelſea caſe, in Glanville, it is laid down, that the electors ought to continue together, or meet again by adjournment, till they can agree to an election by plurality of voices; and it is there ſaid, a voter may, *in ſuch a caſe*, after he has voted, change his mind, and give his voice again to another. In the Chippenham caſe, the electors who pretended to confine the right of election to a bailiff and twelve burgeſſes, the number of voters conſiſting of twelve only at the meeting for the election, were equally divided between two of the candidates for one of the vacancies, although unanimous as to the other. This occaſioned an adjournment of the election by the agreement of both ſides, to a future day,

Vid. Appendix.

To take effect from 10th July 1790.

Equality of votes.

Glanv. 21.

Glanv. 47, 58.

upon which they met and proceeded to election, which was then determined in the favour of one of the conteſting candidates by the thirteenth burgeſs, who appeared at the adjourned meeting, ſuppoſing the right of voting belonged to them only; but the other candidate was choſen by a majority of the burgeſſes at large, who had not claimed a right to vote at the former meeting, and the election was held good in favour of the latter candidate. But at ſuch an adjourned meeting, it ſeems as if the poll could only be continued by taking any votes which remain unpolled. To proceed to the election *de novo*, under the ſame writ, would, in moſt caſes, be impoſſible, without violating ſome of the rules preſcribed by ſtatute made ſince the determinations in Glanville, either for the commencement or finiſhing of the poll, or for the return of the writ. In ſuch caſe of an equality of voices, the returning officer would do well to make a double return, upon which either party, upon petition, might diſqualify ſome of his adverſary's votes, or a new writ would iſſue. If the returning officer proceeds to a ſcrutiny, he cannot do it after a proclamation of the majority, without an adjournment. Where he hath done otherwiſe, it hath been held a breach of privilege, for which the returning officer was committed. Within twenty days after the election is finiſhed, the returning

Jour. 17. p 73.

returning officer muſt deliver to the clerk of the peace all the poll-books of the election. 10 An. c. 23. ſ. 5.

Cloſing the poll.

The poll-book ought not to be cloſed until all the voters preſent, i. e. who come in during the continuance of the poll, and offer their voices, have polled. But as a man is not compellable to give his ſuffrage at all, or at any particular time, but at ſuch period of the poll only as he thinks will beſt ſerve the candidate to whom he gives it, it muſt be left to the impartial diſcretion of the returning officer, regulated by common uſage, to determine what time he will allow towards the end of the poll for the voters to come in. This time ought to be regulated by the extent of the diſtrict for which the election is made, the number of voters remaining to be polled, which may generally be nearly aſcertained, and the approach of the return day. It is uſual to make three proclamations at a ſmall interval from each other, that the poll is about to be cloſed at a certain time, which is a fair notice to the remaining voters to come in. And the want of due proclamation before the cloſing of the poll was one of the cauſes aſſigned in the Dorſetſhire caſe, for the iſſuing of a new writ. Where the conteſt is very near, and the candidates are very urgent for the continuation of the poll, though but few voters remain to be polled, it is uſual for the returning officer to fix a particular time, at a reaſonable diſtance,

15th Feb. 1677.

for closing the poll. This is generally done by the consent and agreement of all parties, as in the Bedford case; but may, and in some cases I apprehend, ought to be done without their consent, whenever the returning officer, exercising an honest and fair judgment, shall deem it reasonable. For the continuation of expence and confusion in such case, is attended with great private and public inconvenience; and no one can complain of injury if the rule be general, and fairly applied. The franchise of the voter, as well as the interest of the candidate, should be considered in laying down the rule. Where the poll is once declared and acknowledged, the election is complete. In the Arundel case, after the poll was finished, and the numbers pronounced, the mayor refused to dissolve the assembly; all the electors departed except two, and the mayor's steward, who remained from the hour of twelve, at which time the poll was declared, till five o'clock in the afternoon, in which interval other voters came in, and turned the majority against the candidate who before was at the head of the poll. The committee, however, displaced the member returned upon the revived poll, and declared the other duly elected. Any misconduct of the returning officer is punishable, and always punished by the house. The poll, though improperly closed by the returning officer, cannot be continued by

Bedford Ca. Lud. 352.

Glanv. 73.

After numbers declared, the election is complete.

Revived poll void.

8 Jour. 32, 62. 786. 76. 90. 276. 417.

by the conſtable, or any other perſon; and if it is, neither the poll nor any parol evidence can be given of votes ſo taken. For the ſtatute of 2 G. 2. which requires the returning officer to be ſworn, and the 18 G. 2. which directs the bribery oath to be taken before the "*returning officer*," do both, by implication, ouſt any other perſon of the right.

1 Dougl. 191. Cricklade Caſe.

2 G. 2. c. 24. ſ. 14.

None but the returning officer can take the poll.

Of the return.

The poll being thus taken, cloſed, and declared, the returning officer muſt make his return of the perſons duly choſen, according to the mode preſcribed by the writ and ſtatutes relating thereto. By the 25 G. 3. c. 84. it is provided, that upon the day, or the next day after the final cloſe of the poll, he ſhall publiſh and declare the name of the perſon, &c. having majority, and ſhall make a return forthwith, unleſs he grant a ſcrutiny. The words of the writ, ſo far as they relate to the return are, "and the names of the knights, citizens, "and burgeſſes, ſo to be elected, you cauſe "to be inſerted, in certain indentures to be "thereupon made between you and thoſe who "ſhall be preſent at ſuch election, *and them at "the day and place aforeſaid you cauſe to come*, "&c. &c. And that the election in your full "county, ſo made diſtinctly and openly, under "your ſeal, and the ſeals of thoſe who ſhall "be preſent at ſuch election, *you do certify to "us, in our chancery, at the day and place "aforeſaid, without delay*, remitting to us one

25 G. 3. c. 84. ſ. 1.

Election to be declared on the day, or the day after the poll finiſhed.

"part of the *aforeſaid* indentures annexed to "theſe preſents, together with this writ." The certificate of the election is required to be the ſame both in county and borough elections; that is, by indentures, under the ſeals of the electors, and of the returning officer, who ſeals a counterpart thereof. This practice has been conſtantly complied with, and ſeems analogous to proceedings of inquiſition before the ſheriff and coroner, who return their inqueſts under ſeal. Any other mode of making the return has been held bad, but amendable. If the return from the borough to the ſheriff, or of the ſheriff over, be ſufficient in ſubſtance, it ſhall not be impeached for want of form or ſurpluſage. But if the return be repugnant and irreconcilable, as if the ſame parties, by ſeveral indentures, return different perſons as burgeſſes for one and the ſame place, the return is void, and neither party can be admitted into the houſe till the return be amended. Where the return annexed purported to be an indenture, but omitted ſtating the uſual form, viz. that it was "made between the ſheriff on one part, and the mayor, &c. on the other part," "but *witneſſed that the mayor, barons, and jurats of the port had choſen,*" and eighteen ſeals were affixed to it, but *not the corporation ſeal*; this was held a good return. So where the indenture purported to be made between the ſheriff on one part,

11 Nov. 1678. Northampton Ca. Glanv. 137.

bid.

1 Apr. 1679.

Of ſigning and ſealing the indenture.

part, and the bailiff and burgeſſes on the other part, &c. in witneſs whereof "*they had put their ſeals*;" but there was only *one* ſeal affixed, and that under the bailiff's name; underneath which there were burgeſſes names, *but no ſeal*, and witneſſes were indorſed: this was held a good return. And in the ſame caſe, an indenture, ſealed by the burgeſſes to which the bailiff was not a party, was held bad. And the ſame was again reſolved upon another ſuch return. But where the return has been ſealed by the mayor or bailiff only, without the burgeſſes, it has often been held ſufficient. A counterpart of an indenture, executed by the ſheriff, was held a good return, where the principal indenture had been ſtolen; ſo where the precept was directed to one of the burgeſſes, a return not ſigned and ſealed by him was held bad; and another return, tendered and ſigned, and ſealed by him, was held ſufficient. Where a perſon preſumed to act as returning officer who was not ſo, the houſe reſolved that he was guilty of a high crime and miſdemeanor, and committed him; and the ſheriff, and under-ſheriff were ordered to attend. And in another caſe, the accepting of a return from a wrong officer, was puniſhed by the houſe.

Ibid. 18 Mar. 1690. 28 Jan. 1766. 18 Nov. 1740. 13 May 1717. 9 Jan. 1721-2. 18 Jan. 1722-3.

The manner of "cauſing the members to come," was formerly by inſuring that obedience "*per manucaptores*," or, in modern phraſe, bailing their appearance, as may be

ſeen in the returns ſtated in the fourth part of Prynne; and though the practice is diſuſed, yet this mode of compulſion ſhews ſtrongly the origin and growth of parliamentary repreſentation. The indenture certifying the election being duly ſigned and ſealed, muſt be annexed to the writ, and returned together with it; and where there is occaſion to make another return, the order is, that the return annexed ſhall be taken off the file, and the indenture of return, made by the legal officer, be annexed to the writ in its ſtead. In order the more particularly to enforce a regularity in the making of ſuch return, and to prevent negligent, falſe, and double returns, various ſtatutes have been enacted from time to time, and ſome of them at an early period. The *negligence* of ſheriffs, in not duly making their returns, was the firſt object of correction; if the forbiddal of a thing, without a ſanction annexed, can be called a correction. It was enacted, that if any *ſheriff* be thenceforth *negligent* in making his returns of writs of parliament, or leave out of the return any city or borough, which of old time uſed to ſend members to parliament, he ſhould be puniſhed *as in time paſt*; no penalty being particularly annexed by this ſtatute, any more than by the *ſubſequent* one, which required proclamation to be made of the day and place of election fifteen days before election. His

7 H. 4. c. 15. Annexing the indenture.

Helliſton Ca. 2 Dougl. 53.

Negligent returns.

5 R. 2. ſt. 2. c. 4.

7 H. 4. c. 15.

conduct

conduct was ſoon afterwards by another ſtatute, ſubjected to the examination and juriſdiction of the juſtices of aſſize, and to a penalty, on conviction of 100l. to the king. 11 H. 4. c. 1.

There are various inſtances in the journals, where the houſe has *cenſured*, and even *committed* the returning officer to the cuſtody of the ſerjeant at arms, without hearing him, for not making a return of the writ, and ſometimes for *not making a return* generally; ſo where there has been any *delay* in the return of the writ, the meſſenger of the great ſeal, the mayor and ſheriff have been ordered to attend, and the perſons with whom the fault has lain have been cenſured and committed. The interval of forty days, between the teſte and the return of the writ, gave ample time, eſpecially in the earlier days of repreſentation, for proceeding to, and completing the election. A negligence ſo groſs as to poſtpone the return beyond that period, would have effectually defeated the king's ſummons of a parliament; for the repreſentatives could never have met, and acted in their parliamentary capacity, till the ſheriff had certified they were the real members. Formerly, when parliaments were very ſhort, and were generally diſſolved as ſoon as the immediate exigency of the crown was ſatisfied, ſuch delay would have effectually deprived the neglected part of the conſtituent body of its privilege; for

8th Journ. 639. 10th Jour. 362. Ibid. 363. 14th Jour p. 4. 18th Jour. 46. 58 Ibid. 630. 21 Jour. p. 407. 25th Journ. p. 1010.

for their members might have come either after the parliament was diſſolved, or after the material buſineſs was finiſhed. Soon after the Revolution, when the jealouſy of the commons had made them ſharp-ſighted to the moſt remote infringement of their rights, in order to prevent the ill conſequences which might follow from negligence in the return of the writ, a ſtatute was made, reciting, "in "order to prevent abuſes in the returns of "writs of ſummons for calling a *parliament*, "or writs for the choice of any *new* member "to ſerve in parliament, and to the end they "may be duly returned and delivered to the "clerk of the crown, to be by him duly "filed *according to the ancient and legal courſe*, "whereby it was enacted, that the ſheriff, or "other officer having the execution and return "of ſuch writ, ſhould, *on* or *before* the day that "any future *parliament* ſhall be called to "meet, and with all convenient expedition, "not exceeding fourteen days *after any elec-* "*tion made* by virtue of any *new* writ, either "in perſon, &c. make return of the ſame to "the clerk of the crown, to be by him "filed;" and the ſheriff offending againſt the true intent and meaning thereof, was ſubjected to the penalty of* five hundred pounds, half

30 & 11 W. 3. c. 7.

* So that for a *negligent* return, the ſheriff may forfeit 500l. and no action is given to the party grieved; but for a falſe

half to the king, half to the informer. This ſtatute rather enforces the old acts againſt negligent returns under an increaſed penalty, than makes any great alteration, except in limiting fourteen days from the election for the return of new writs. But as no time was particularly limited by this ſtatute for *making the election* upon a *new* writ, the old uſage in that reſpect was impliedly confirmed; for that ſtatute requires the *return* to be *duly* made, and *duly* filed, according to *the ancient and legal courſe*, which it could not be, if the election itſelf was poſtponed beyond the ancient and legal courſe. It will be pertinent then to conſider, *what* was the ancient and legal courſe of returns upon general writs, and what upon writs iſſuing during the ſitting of parliament. The ancient and legal courſe of returns, before the ſtatute, was undoubtedly to return the writ upon a general ſummons to parliament, at or before the time commanded by the writ itſelf, and the writ being *original* (as we ſhall ſhew at the end of the chapter), there could be no enlargment of the time for its return. If the thing ordered to be done by the writ was not done, the ſheriff returned ſpecially what he had done upon it; and of this there are abundant inſtances in the old

Of the writ and return.

On a general ſummons.

a falſe or double return, wilfully and maliciouſly made, there ſeems to be no forfeiture by way of *penalty*, but double damages given to the party grieved.

returns,

Prynne's Brev. 3d part, p. 224. 4th pt. paſſim.

returns. Thus, where a borough had not returned the members to *him*, he ſtated ſpecially that the returning officer of the borough had made no return to him of any members; ſometimes, that ſuch returning officer had not proceeded to the election, or ſuch other ſpecial matter, as the ſheriff choſe, ſubject to enquiry and puniſhment, if the ſpecial matter was falſe.

On a new vacancy.

In the caſe of *new* writs iſſuing during parliament, the return by the laſt mentioned ſtatute is required to be made within fourteen days *after the election.* Now ſuch writ not limiting any particular time for making the election, as the general writ for the ſummons of parliament does and of neceſſity muſt, the time for making the election upon a *new* writ remained undefined; conſequently, negligence in making the election was not within the penalty inflicted by that ſtatute. Nothing but the interference of the houſe to ſtimulate and quicken the election, when the uſual time for making it was elapſed, could remedy this inconvenience. In the Weſtminſter election of Vandeput and Trentham, the houſe did interfere in ſuch caſe, and quickened the proceedings by cenſuring the delay, and puniſhing the authors of it. If the returning officer were to protract the election unneceſſarily, it would certainly be a contempt of, and puniſhable by, the houſe of commons; it would alſo at common law be an

Weſtminſter Ca. Vandeput & Trentham. 1749. Par. Deb. by Debrett, vol.

an abuſe of his office, and as ſuch he might be indicted, and upon conviction puniſhed by fine and impriſonment, as far as the reſtraints of ſtatute will permit. In the caſe therefore of *general* writs of ſummons, there is this *poſſible* inconvenience, that the time preſcribed for the election may be too ſhort, more eſpecially when the ſheriff thinks a ſcrutiny neceſſary; but it would be a much greater inconvenience to give a latitude of return beyond the letter of the writ to the ſheriff himſelf. In ſuch caſe, the limiting of any period in the writ would be rendered nugatory, and the council of the nation would not aſſemble when the king, who is ſuppoſed to know the neceſſities of the ſtate, requires it, but when ſuch ſheriff and returning officer thinks proper to ſay he is ſatisfied the election is right. The poſſible inconvenience of double or ſpecial returns univerſally, if the ſheriff *muſt* return the writ at a *certain* period, whether the election be finiſhed or not, is no anſwer. Every human inſtitution is liable to evaſion, and nothing but combination could produce the inconvenience put. No hypothetical evil, built on an aſſumed breach of duty by thoſe who muſt be truſted with the execution of the law, is an objection to the law itſelf. As well might we reject human teſtimony as a medium of truth, becauſe men may miſtake or perjure themſelves. Government would be

diſſolved

diſſolved on ſuch principles. But ſuppoſing the inconvenience from the obſervance of the law itſelf, greater than the inconvenience of breaking it, though it is a good reaſon for amending the law, it is none for diſobeying it whilſt it remains law; but a diſobedience to the letter of the law, under circumſtances, may not be a *legal* diſobedience.

Thus the writ requires the ſheriff to return two members duly choſen. But where the returning officer of a city or borough has made no return to the precept, or in caſes of double returns, or of miſtaken returns, or where the election cannot be determined by the time the return is required to be made, the ſheriff does not literally comply with the writ; for though he ought to make ſome return, yet it is evident, in all theſe caſes, he does not return two members duly choſen: for the returns ſuppoſed are a confeſſion, either that no choice, or a doubtful choice, has been made; and in the third caſe, the return itſelf, as far as it pretends to be of members *duly choſen*, is diſproved by the judgment of the houſe, by placing others in their ſtead; and to ſay, notwithſtanding the caſes put, or which may be put, that the letter of the writ ſhall be complied with, would, in ſome caſes, be to compel a man to impoſſibility. Upon this reaſoning therefore the ſheriff, being under the neceſſity of making *ſome return* upon a general

neral writ by the day mentioned therein, ſuppoſing him guilty of no neglect, would ſtand excuſed, if upon ſuch a writ he was to make a ſpecial return; and if ſuch ſpecial return were true, it muſt, both upon principle and precedent, be a legal return.

Upon an attentive peruſal of theſe acts relating to *negligent* returns, it will be found that the *ſheriff* only, or ſuch perſon as has the *return of the writ*, is mentioned, and the penalties are fixed upon ſuch perſon only. The letter of the act does not *expreſsly* extend to any other returning officer, ſo that no penal action, upon any of the ſtatutes, would lay againſt any other returning officer for a negligent return; ſuch neglect, however, would be puniſhable in a criminal proſecution at common law for neglect of duty, if the *uſual* and *proper* time for electing and making the cuſtomary return of two citizens or burgeſſes were lapſed. In an action upon the caſe by the party injured, damages alſo might be recovered againſt the ſheriff. In ſuch caſe it would become a queſtion, what were the *proper* time for the returning officer of a city or borough to make a return to the precept? This rule muſt be laid down by analogy to other caſes of returns, for it is not aſcertained by any ſtatute; the 10 & 11 W. 3. extending only expreſsly to the return *of the writ*. Now the uſage in making returns of the writ itſelf, the

Negligent return of precept.

Terms of the writ.

the ſpirit of parliamentary inſtitution, and analogy to ſtatutes relating to the return of the *writ itſelf*, each ſeparately ſhews the rule, and all of them together force the mind to an irreſiſtible concluſion, that in cities and boroughs, as well as in counties, the two members ought to be choſen and returned by the time ſpecified in the writ, if poſſible; and the returning officer would be puniſhable upon indictment for neglect in not making a return of two members, unleſs he could ſtate good reaſons to account for the apparent neglect.

What return, where ſcrutiny *unfiniſhed* at the return day.

How far the returning officer, having completed the election by poll, may afterwards, upon a general writ, protract the return by a ſcrutiny, depended, till the 25 G. 3. c. 84. upon the legal principles of the ſcrutiny itſelf, and the power of continuing it beyond the return day. It is taken for granted, upon the reaſoning before ſtated, that a return muſt be made of the writ on or before the day limited for that return; the queſtion can only ariſe, therefore, on the nature of the return.

Origin of ſcrutiny.

4 Inſt. 48.

Origin of ſcrutiny.

12 Journ. 353. 350.

It is not eaſy to ſay exactly when the practice of granting a ſcrutiny commenced. It ſeems not to have exiſted in Lord Coke's time, for he uſes "poll" and "ſcrutiny" as ſynonimous terms; we muſt therefore conſider it as having clearly ariſen at a more recent

 period.

period. There are frequent complaints in the 10th year of King William, and after that period, of petitions ſtating the refuſal of a ſcrutiny as a grievance to the petitioner; from whence we muſt conclude, that they were conſidered as legal at that time; but that they are probably not of older date than the 7 & 8 W. 3. whereby a written poll was eſtabliſhed at county elections under the regulations of poll clerks and inſpectors. A ſcrutiny ſeems indeed to be the natural conſequence of ſuch an eſtabliſhment, being but an accurate inveſtigation of the truth of thoſe facts reduced to writing, which were to entitle the voter to poll, or of the legal reſult of them. Before the preſervation of thoſe facts by a poll-book, which is firſt provided for by the ſtatute of W. 3. there could be nothing to review but the mere number of votes given. The very proviſion of inſpectors, implies a power in the ſheriff to review and rectify; they would be uſeleſs if the poll-book were concluſive, and partial if they were abſolutely to over-rule the poll-book; but under the controul and opinion of the returning officer, they check and rectify each other.

13 Journ. 334. 353. 327. 650. 15 Journ. p. 9, 10.

16 Jour. p. 408. 410.

Ibid. 17 Journ. p. 26. 481, 485.

If a ſcrutiny were legal in itſelf, the inconveniencies ariſing from it could not make it illegal, though they might furniſh a good reaſon for prohibiting or modifying the ſcru-

Legality of ſcrutiny.

tiny, with ſome reſtrictions *. If, as ſome contend, it exceeded the legal authority of the ſheriff, then, however expedient it might have been, it muſt have been confeſſed illegal. Whether the ſcrutiny was an illegal extent of the ſheriff's authority, muſt, in a great meaſure have depended upon the nature of his office. The ſheriff in this, as in other reſpects, is both a *judicial* and miniſterial officer. He firſt judges on the goodneſs of the vote, and then miniſterially takes and records it. If he does not exerciſe his judgment at all, but takes it without enquiring into the legality of the vote offered, eſpecially when doubts are properly ſuggeſted to him, it is a wilful omiſſion in the exerciſe of his duty, prejudicial to one of the candidates, and the true electors. Thus far is clear. Could he then review his judgment at any time whilſt he was preſiding at the election, under the writ, and take cognizance of new facts introduced, relating to votes upon the poll, or of new arguments upon the previous facts? Whilſt the power of acting upon the ſubject itſelf continues, it is his duty to act to the beſt of his judgment; and if he is fairly endeavouring to inform his judgment (for it would be breach of duty if pretended only), it ſeems clear he may. And this, by analogy to all juriſdictions, even

* Mayor juſtified in granting a ſcrutiny, *Sudbury caſe*. Philips 137.

where

where the proceedings when entered are a record, as in ſeſſions, and the courts above, the judgment may be varied during the ſeſſion or the term. Adjourned meetings for taking the poll within the period limited for the return of the writ, are, in law, but one meeting. How long, then, does his authority laſt? Clearly till the thing be done which is required to be done *within the time limited* for doing it; that is, in caſes of election, till the members be duly choſen (not exceeding the time preſcribed by the writ) which cannot be till the *major part of the freeholders preſent* decide upon whom their choice falls; and untill the poll-book is finally cloſed and the election declared. Until that period, therefore, he is acting under the power given him, according to the duty of his office, and to the beſt of his judgment. This reaſoning is fortified by the inference before drawn from the before-mentioned ſtatute of W. 3. and by practice for nearly a century, during which time there is no ſtatute or reſolution of the houſe againſt the legality of a ſcrutiny, although there are abundance of inſtances from the reign of W. 3. where the refuſal of it by the returning officer has been made a ſubject of complaint, which plainly ſhews the practice to have been conſidered legal, though the returning officer could not be compelled to grant it. The 11 G. 1. c. 18. alſo, which obliges the

returning officer to grant a ſcrutiny in London, if "*lawfully demanded*," as it lays down no rule for demanding it, can be conſtrued only by referring to ſome antecedent practice, which the legiſlature recognized as legal. In the Weſtminſter election, in 1784, the error ſeems to have been, not in granting a ſcrutiny, but in not returning the writ upon the return day, at which time, as it ſhould ſeem, upon the foregoing principles, either a return of the candidate who had then the majority as duly elected, or a ſpecial return, or a double return, ſhould have been made. But by the 25 G. 3. the doubt, if there was any, is taken away, it being thereby enacted, that if a ſcrutiny be demanded by any candidate, or any two or more electors, it may be granted *if the returning officer deem it neceſſary*, but ſo as that, on a general writ, a member or members may be returned and filed before or upon the return day; and in the caſe of an election under a precept, at leaſt ſix days before the day of the return of the writ, and on a new writ, within thirty days after the cloſe of the poll, or ſooner if conveniently may be. And the returning officer is thereby empowered to adminiſter an oath, in the proſecution of the ſcrutiny, to any perſon conſenting to take the ſame; and to prevent partiality, where there is more than one objecting party, the parties may object alternately.

25 G. 3. c. 84. ſ. 1.

ſ. 6.

ſ. 2.

The

The little check there was formerly upon the proceedings of the ſheriff, enabled him to make any return he choſe, without the fear of detection. Falſe returns were continually made. By the ſtatute, therefore, of 23 H. 6. reciting that the ſheriff often returned citizens and burgeſſes not duly choſen, and ſometimes ſuch as were not returned by the mayor, or other returning officer; and ſometimes embezzled the writ, making no precept under colour of the words of the writ, to elect "*in pleno comitatu*," it was enacted that he ſhould make *a good and true return*, under the additional penalty of 100l. to be recovered by the perſon not returned, or any other ſuing, with coſts, and 100l. to the king; and ſubjects alſo the perſon wrongfully returned to the ſame penalties. And by the ſtatute of king William, all *falſe* returns, wilfully made, are declared to be illegal; and returning a member upon a right of election, contrary to the laſt determination of the houſe, is declared to be a falſe return. And the perſon duly elected may recover double damages and full coſts againſt the officer, or other perſon making or procuring the ſame. But over and above the remedy which the party grieved has by action under this ſtatute, the returning officer, or other perſon offending, is puniſhable by the houſe,

Falſe returns, 23 H. 6. c. 14.

Sheriffs ſhall make a good and true return

7 & 8 W. 3. c. 7. ſ. 1. Perpetuall by 12 Ann ſ. 1. c. 15. Vide 1 Wilſ. 125.

ſ. 2.

ſ. 3.

Lutw. 185. 189. Salk. 504.

* See arguments on action for maliciouſly returning two indentures. Barnardiſton v. Soame, Atkins's Parl.

32 Jour. p. 361. 24 Jour. 92. 33 Jour 157. 24 Jour p. 45. 20 Jour. 92. 146.

which, in ſuch caſes, has generally committed him to cuſtody, and ſometimes to Newgate. And the accepting and returning of indentures of return, not ſigned by the proper *clerk* (i. e. returning officer in Scotland), was held a falſe return, and the under-ſheriff offending was committed.

Double returns.

And in order to prevent the evil of *double* returns, it was by the ſame ſtatute enacted, that if any perſon ſhould wilfully, falſely, and maliciouſly, return more perſons than are required to be choſen by the writ or precept, the ſame remedy may be had by the party grieved againſt him or any others procuring the ſame. The ſtatute of 25 G. 3. enacted, that if *no return* ſhall be made to a *general* writ upon or before the return day, or upon a *new* writ within fifty-two days after the day when ſuch writ bears date, or a *ſpecial* return be made, it may be lawful for any perſon, having had or claiming to have had a right, to be returned as duly elected thereat, who ſhall think himſelf, or themſelves, aggrieved, to petition the houſe of commons concerning the ſame. And a day and hour ſhall be appointed for hearing the petition, and notice in writing ſhall be given by the ſpeaker to all parties thereto, &c. And a ſelect committee ſhall be appointed purſuant to the 10th and 11th G. 3. which committee ſhall try and determine *whether any, and which of the perſon or perſons named*

25 G. 3. c 84. ſ. 10.

named in ſuch petition ought to have been returned, or whether a new writ ought to iſſue; which determination ſhall be final to all intents and purpoſes; and the houſe being informed thereof, ſhall give the neceſſary directions for ordering a return to be made, or for altering the return if made; or for the iſſuing of a new writ for a new election, or for carrying the ſaid determination into execution, as the caſe may require.

And for any offence againſt that act, the returning officer is thereby made liable to proſecution by information or indictment, and no *nolle proſequi* or *ceſſet proceſſus* ſhall be entered. And if any ſheriff or returning officer ſhall *wilfully delay*, neglect, or refuſe, duly to return any perſon who ought to be returned for any county, city, borough, &c. every ſuch perſon, in caſe it ſhall have been determined by a ſelect committee appointed in the manner herein before directed, that ſuch perſon was entitled to have been returned, may ſue the ſheriff, or other officer or officers, having ſo wilfully delayed, neglected, or refuſed duly to make ſuch return, and every or any of them, at his election, in any of his majeſty's courts of record at Weſtminſter, or the court of ſeſſions in Scotland; and ſhall recover double the damages he ſhall ſuſtain by reaſon thereof, with full coſts of ſuit. Where the right of election is doubtful, and conſequently

ſ. 12.

ſ. 14.

what candidates are duly elected, the returning officer may, and for his own ſafety ought to make a double return. But this muſt be done upon the returning officer's own judgment, not upon the agreement of the parties. If two or more ſets of electors make each a return of a different member, that return only which the returning officer, to whom the ſheriff's precept was directed, has ſigned and ſealed, is good, and the members by him returned ſhall ſit until diſplaced on petition. †

* Double returns.

15 Feb. 1677.

Glanv. 137. Pontefract caſe.

Helleſton 2 Dougl. 17.

Where a falſe return, or a double return, is made, it may be amended at the bar of the houſe. The former either by taking the return off the file, if made by an illegal returning officer, and annexing to the writ the real return delivered by the legal officer to the clerk of the crown. Where the chriſtian name of the party returned is miſtaken, it may be rectified: ſometimes the amendment is made by eraſure of the indorſement of the wrong name, and every thing belonging to it, and by a ſubſtitution of the right name. Formerly the returning officer himſelf uſed to amend the

Amending return.
20 Jour. p. 46.
24 Jour. p. 18.
30 Jour. p. 466.

29 Jour. p. 52.

18 Jour. 34, 38.
19 Jour. p. 64.
24 Jour. p 56.
25 Jour. p. 463.

* *Double returns* are to be determined before *double elections*, 1784, Tueſday, May 25th, votes. *Vi.* 1 *Dougl.* And the return immediately annexed to the writ, muſt be the firſt heard ſtanding order, 18th Mar. 1727.

† From 49 Hen. 3. to 22 Ed. 4th.—not above two or three elections complained of, and not one double return. In 1641, not leſs than 70 double returns.

3 Dougl. 71.

return;

return; but now it is uſually done by the clerk of the crown. The double return is amended by taking one off the file. When the return is made, in order to preſerve it free from diſpute, the clerk of the crown is directed to enter it, whether a ſingle or double return in a book to be kept for that purpoſe in his office, within ſix days after the return, and no amendment or alteration muſt be made by him or his deputy, or other, of the return, except by order of the houſe. And ſuch book, or a copy thereof is directed to be ſufficient evidence of the return, in any action to be brought upon that ſtatute; and for any default or omiſſion in ſuch particulars, or for certifying any perſon returned who was not returned, the clerk of the crown is liable to a penalty of 500 *l.* to the party grieved, and forfeiture of his office.

24 Jour. p. 45.
25 Jour. p. 466.

7 & 8 W. 3. c. 7. ſ. 5.
Perpet. by 12 Ann. ſ. 1. c. 15.

CAP. V.

How the Election may be avoided—Of Bribery, &c.

20 Jour. p. 53. 60. 22 Jour. 819.

IF the election is made of a perſon or perſons ineligible, ſuch election is void either *in toto*, or of one only, according as the ineligibility applies to all or one only. Where that ineligibility is clear, and pointed out to the electors at the poll, it has been held that the votes given to ſuch ineligible candidate, after notice, are thrown away, and a competitor, though choſen by the ſmaller number of electors, has, in ſuch caſe, been held duly elected. But ſuch ineligibility ought to be clear, and grounded upon ſome known and ſettled rule of law. For it would be hard to ſay, that the electors, who might probably act upon their real ſentiments, have thrown away their votes, becauſe by a determination *ex poſt facto*, upon a matter not before ſettled, it ſhould appear they had formed a wrong opinion. It was upon this ground, probably, that, in the Abingdon caſe, though the perſon returned was held ineligible, as being ſheriff of the county wherein the borough lay for which he was returned; yet the committee only declared the election void, but did not determine the other candidate duly elected.

Kirkcudbright Ca. Feb. 1782.

3 Dougl. 417.

The

The ſame doctrine holds at law in the election to offices in which, after notice of the ineligibility of any particular candidate, the votes given to him are held to be thrown away. Cowp. 530. Rex v. Monday, Taylor v. mayor of Bath, 15 Geo. vid. 3 Lud. 324.

So alſo, if the right of election has been miſtaken, though there be no competitor, if the electors petition againſt the election, it may be avoided.

If the original writ, which is the foundation of election, has iſſued improperly, every thing done under it is void. Thus, where the writ for a ſecond election iſſued, before the former election was avoided, the ſubſequent avoidance of the firſt election was held not to cure the defect; but the ſecond election was declared void. So where the writ has miſcarried, or has been improperly detained, or due notice has not been given of the election, or where the poll has not been duly taken or the proper and legal officer does not execute the writ, the election has been avoided. So where illegal commiſſions have iſſued to the delegates in Scotland, the elections made under them were held ineffectual. 8 Journ. 271, 258, 264. 8 Jour. 354. 8 Jour. 106. 9 Jour. 302. 439. 9 Jour. 439. 24 Jour. 104.

I have ſhortly taken notice of theſe deciſions of the houſe merely to ſhew with what jealouſy it always watched over the freedom of election; for the time, the place, and the mode of election, as we have before ſeen, having been for the moſt part ſettled by various acts of parliament, any variation from them would, of courſe,

courſe, invalidate the election. Nothing can more ſtrongly ſhew the anxiety of the legiſlature to preſerve the freedom of election, than forbidding, under penalties, even the ſolicitation of votes, by any perſon employed in managing any part of the exciſe or cuſtoms. There is a reſolution alſo, of the houſe of commons, that it is a high infringement of the liberties and privileges of the commons of Great Britain, for any lord of parliament, or any lord lieutenant of a county, to concern themſelves in the elections of members to ſerve for the commons in parliament. As it is almoſt impoſſible that an act of parliament ſhould enumerate every particular regulation for preſerving the ſpirit of the law entire, and enforcing the execution of it, ſuch matters muſt ſtand upon the common principles of reaſon and juſtice.

5 W. & M. c. 20.
12 & 13 W. 3. c. 10.
1701-2.

From theſe, therefore, we learn, that the poll ſhould be peaceably conducted, that the voters and returning officer ſhould not be intimidated, and if there be riots, it will be a good ground to avoid the election, and the principal rioters, if duly criminated, will be committed by the houſe. But this caution againſt riots is not ſo far extended as to let in an oppoſite evil; for where a perſon read the proclamation againſt riots during the election, who had no ſufficient authority to do ſo, the houſe cenſured the conduct, and committed

Clarv. 143.
14 Jour. p. 25.
20 Jour. p. 60.
20 Jour. p. 622.

the offender. So if the election be gained by any trick or surprize by either party upon the other (upon the principle of the foregoing decisions) it must avoid the election. Thus, the writ having been produced by surprize, at a meeting where many of the electors were present upon a different business, and where the election was made without sufficient notice to the electors (before the statutes regulating the notice), the election was held void. And, in the latter case, the house of commons took notice of it *ex officio*, upon a petition tried between two parties contending for the second vacancy, though there was no allegation of that kind in the petition, to the prejudice of the other member, who was almost unanimously elected. Where both the petitioner, and the person returned, each perhaps conscious of unjustifiable acts which would eventually prevent either of them from being successful, consent that the election shall be set aside, the committee, without going into the merits, has declared it void, and sent the parties to a new election. And where the members returned declined to defend their seats, the committee declared the petitioners duly elected, and that they ought to have been returned without hearing them, ex parte; following the Dumbartonshire case in Feb. 1781. where the like was done.

4 Inst. 49.

Glanv. 19, 26, 68, 78.

Void by agreement of parties.

3 Lud. 138.

See the cases Ib.

But

But if any colluſion be ſuſpected, or there is any circumſtance which ſeems to require examination, the committee will proceed upon the petition, and make enquiries.

3 Lud. 139. citing Ilcheſter and Oakhampton caſes in 1784.

But conſent of parties cannot alter the right of election, as we have before ſeen. The moſt common ground of avoiding an election is for bribery, which, as it is attended with different effects, according to the time in which, and the perſon by whom it is committed, I ſhall conſider at large, without reference merely to that ſpecies of bribery which avoids the election. It is not neceſſary, in this diſcuſſion, to trace the hiſtory of this vice, which the commentator on the laws of England, and another very learned judge, on a late occaſion, ſo juſtly called the growing vice of the times. To trace the manners of the age, is the province of the hiſtorian or philoſopher. The famous caſe of Walter Longe bribing the mayor and corporation of Weſtbury, in the reign of Elizabeth, is no otherwiſe worth noticing in a legal treatiſe, than to ſhew the puniſhment the houſe of commons fixed upon it, by fining the parties, and vacating the ſeat. And in Arthur Halle's caſe, at no great diſtance of time, they did the ſame. The unuſual exerciſe of this aſſumed power of fining, and the difficulty of enforcing payment, occaſioned a doubt whether ſuch a power had in fact been aſſumed by the houſe of commons;

Loft's Rep. 347.

4 Inſt. p. 43. Carew, 2d part, 223.

3 Burr. 1336. 2 Dougl. 402. Jour. 9. May 1571. v. 1. p. 88.

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But Mr. Douglas has put this paſt contradiction, by ſtating the words of the entry in the journals of the houſe.

It was held in the caſe of the *King* v. *Pitt*, that bribery is an offence at common law ſubject to indictment or information, and ſeveral inſtances have occurred in which the latter mode of proſecution has been adopted; and it has been ſaid, that the ſtatutory incapacities, which will be preſently mentioned, attach upon a common law conviction. Proſecutions at common law for this offence were never put in practice, however, till of late years, ſince the 2 G. 2. for which Mr. Douglas ſeems to have given ſatisfactory reaſons. The increaſe of bribery ſoon after the Revolution, practiſed under the ſuppoſed evaſion of *money's worth* inſtead of money, either in the ſhape of preſents, treating, or otherwiſe, occaſioned a reſolution of the houſe of commons, which was afterwards made a ſtanding order of the houſe, and with ſome trifling variations was ſhortly after moulded into a ſtatute. The reſolution, which I ſhall ſtate for the purpoſe of obſerving upon it, was as follows: Reſolved, "That if any perſon, hereafter to be elected "into a place to ſit and ſerve in the houſe of "commons for any county, town, port, or "borough, *after the teſte*, or the iſſuing out of "the writ or writs of election, upon the call-"ing or ſummoning of any parliament here-"after,

3 Burr. 1388, & 1235.
4 Dougl. 294. Hindon Ca. & ib. Shaftſbury Ca.

Vid. 2 Dougl. 400.

9th Journ. p. 411.
Ib. 517.

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3 Burr. 1388, & 1235. 4 Dougl. 294. Hindon Ca. & ib. Shaftſbury Ca.

Vid. 2 Dougl. 400.

9th Journ. p. 411. Ib. 517.

"after, *or after any ſuch place becomes va-*
"*cant* hereafter in the time of parliament,
"ſhall by himſelf, or by any other in his be-
"half, or at his charge, at any time before
"the day of his election, give any perſon or
"perſons, having votes in any ſuch election,
"any meat or drink, exceeding the true
"value of ten pounds in the whole, in any
"place or places but in his own dwelling
"houſe or habitation, being the uſual place
"of his abode for ſix months laſt paſt; or
"ſhall, before ſuch election be made and
"declared, make any other preſent, gift, or
"reward, or promiſe, or obligation, or en-
"gagement to do the ſame, either to any
"ſuch perſon or perſons in particular, or to
"any ſuch county, city, town, port, or bo-
"rough in general, or to or for the uſe and
"benefit of them, or any of them; every
"ſuch entertainment, preſent, gift, reward,
"promiſe, obligation, or engagement, is by
"this houſe declared to be bribery; and ſuch
"entertainment, preſent, gift, reward, pro-
"miſe, obligation, or engagement, being duly
"proved, is and ſhall be ſufficient ground,
"cauſe, and matter, *to make every ſuch election*
"*void*, as to the perſon ſo offending, and to
"render the perſon ſo elected incapable to ſit
"in parliament by ſuch election; and hereof
"the committee of elections and privileges
"is appointed to take eſpecial notice and
"care,

"care, and to act and determine matters "coming before them accordingly.

And ſoon after it was enacted, "That no "perſon or perſons hereafter to be elected to "ſerve in parliament for any county, city, "town, borough, port, or place, within the "kingdom of England, dominion of Wales, "or town of Berwick upon Tweed, after "the *teſte* of the writ of ſummons to parlia- "ment, or after the *teſte* or the iſſuing out, *or* "*ordering* of the writ or writs of election "upon the calling or ſummoning of any par- "liament hereafter, or after any ſuch place "becomes vacant hereafter in the time of "this preſent, or any other parliament, ſhall "or do hereafter, by himſelf or themſelves, "or by any other ways or means on his or "their behalf, or at his or their charge, be- "fore his or their election to ſerve in parlia- "ment for any county, city, town, borough, "port, or place within *(as above)*, directly "or indirectly give, preſent, or allow, to any "perſon or perſons, having voice or vote in "ſuch election, any money, meat, drink, en- "tertainment or proviſion, or make any pre- "ſent, gift, reward, or entertainment, or "ſhall at any time hereafter make any pro- "miſe, agreement, obligation, or engage- "ment, to give or allow any money, meat, "drink, proviſion, preſent, reward, or enter- "tainment, to or for any ſuch perſon or per- "ſons in particular, or to any ſuch county, 7 W. 3. c. 4. ſ. 1.

"city, town, borough, port or place, in "general, or to or for the uſe, advantage, "benefit, employment, profit, or preferment, "of any ſuch perſon or perſons, place or "places, in order to be elected, or for being "elected, to ſerve in parliament for ſuch "county, city, borough, town, or place." And Section 2. "That *every perſon* and per- "ſons *ſo giving*, preſenting, or allowing, "making, promiſing, or engaging, doing, "acting, or proceeding, ſhall be, and are "hereby declared and enacted to be, *diſabled* "*and incapacitated*, upon *ſuch election*, to "ſerve in parliament for ſuch county, city, "town, borough, port, or place; *and that* "*ſuch perſon* or perſons *ſhall be deemed* and "taken, and are hereby declared and enacted "*to be deemed* and taken, *no members* in par- "liament, *and ſhall not act*, ſit, or have any "vote or place in parliament, but ſhall be, "and are hereby declared and enacted to be, "to all intents, conſtructions, and purpoſes, "*as if they had been never returned or elected* "members for the parliament."

3 Lud. 493.

Per Aſton J. 4 Dougl. 292.

The increaſe of this vice, notwithſtanding the foregoing ſtatute, and the groſs corruption which had prevailed at Beverley in Yorkſhire in the year 1727, occaſioned the legiſlature again to interpoſe by a new ſtatute, which, for the more effectual prevention of it, contrary to the common principles of law, begins

begins by obliging the voter to purge himſelf by oath, if required by either of the candidates, or any two of the electors; and then enacts, ſect. 7. "If any perſon, who hath, or "claimeth, to have, or hereafter ſhall have, or "claim to have, any right to vote in any ſuch "election, ſhall from and after the ſaid 24th "day of June, which ſhall be in the year of "our Lord one thouſand ſeven hundred and "twenty-nine, aſk, receive, or take any money "or other reward, by way of gift, loan, or other "device, or agree or contract for any money, "gift, office, employment, or other reward "whatſoever, to give his vote, or to refuſe or "forbear to give his vote in any ſuch elec- "tion; or if any perſon by himſelf, or any "perſon employed by him, doth or ſhall, by "any gift or reward, or by any promiſe, "agreement, or ſecurity for any gift or re- "ward, corrupt or procure any perſon or per- "ſons to give his or their vote or votes, or "to forbear to give his or their vote or votes "in any ſuch election, ſuch perſon ſo of- "fending in any of the caſes aforeſaid, ſhall, "for every ſuch offence, forfeit the ſum of "five hundred pounds of lawful money of "Great Britain, to be recovered as before "directed, by action of debt, bill, plaint, or "information, in any of his majeſty's courts "of record at Weſtminſter; and if the of- "fence ſhall be committed in Scotland, by 2 G. 2. c. 24.

"ſummary action or complaint before the "court of ſeſſions, or by proſecution before "the court of juſticiary, together with full "coſts of ſuit; and every perſon offending in "any of the caſes aforeſaid, from and after "judgment obtained againſt him in any ſuch "action of debt, bill, plaint or information, "or ſummary action, or proſecution, *or be-* "*ing any otherwiſe lawfully convicted thereof,* "ſhall for ever be diſabled to vote in any "election of any member or members to par- "liament, and alſo ſhall for ever be diſabled "to hold, exerciſe, or enjoy any office or "franchiſe to which he and they then ſhall, "or at any time afterwards may be entitled, "as a member of any city, borough, town "corporate, or cinque port, as if ſuch per- "ſon was naturally dead."

Vid. 3 Lud. 447.

The firſt ſtriking feature in the former of theſe acts is, that a new period is thereby marked out, within which if the crime of bribery be committed, and not otherwiſe, the new penalties of that act attach. That period in the caſe of general elections is fixed at the *ordering* of the writ of ſummons; that is, from the *ſigning of the warrant* to the chancellor for iſſuing the writ, which is the only legal order for the general writ, and upon vacancies during parliament from the time the *vacancy* takes place.

Bribery,

Bribery, however, was, and ſtill remains puniſhable at common law, and if detected by a committee in the diſcuſſion of an election cauſe, and brought home upon the candidate or his agent, though in one inſtance only, and though a majority of unbribed votes remains, will avoid the election. Of this there are many inſtances in the Journals, and the caſe of St. Ives has confirmed the doctrine. 2 Dougl. 389.
It has indeed been carried farther in the Chippenham caſe, where the candidate with the ſmaller number of votes was declared duly elected; but this has been juſtly diſregarded ſince the Shaftſbury caſe, and though it was afterwards faintly inſiſted upon in the Worceſter caſe by the counſel in argument, it was ſoon given up. It has been thought hard by ſome, that the election ſhould even be avoided where a majority of unbribed votes remain; but when it is conſidered, that the fixing of bribery in one inſtance affords a ſtrong ground to ſuſpect that the election has been procured by corrupt means, and when it is conſidered that the electors may again exerciſe their franchiſe, the deciſion ſeems neceſſary for preſerving the freedom of election unviolated. Two queſtions have at different times been much debated upon this ſtatute. Firſt, what is bribery within it? ſecondly, what incapacities ariſe upon it? In *Buſh* v. *Rawlins*, B. R. 29 G. 2. bribery was

10th Journ. p. 638.

2 Dougl. 301.

3 Dougl. 260. Vid. 2 Dougl. 413.

defined to be "*muneribus incitare vel illicere*;" but here the queſtion is, not what bribery is in the abſtract meaning of the word, but what is defined to be bribery by the ſtatutes. It is ſufficient to bring the queſtion in iſſue on petition againſt the election, if it charge generally "*corrupt practices*;" theſe being the words uſed by the ſtatute of G. 2. But where the opening was confined to allegation of bribery, the committee refuſed to admit an offer by one voter to bribe another, with a view to prejudice the offerer's vote.

4 Dougl. 55. Cricklade Ca. 3 Dougl. Peterſfield Ca. Lud. 415. Colcheſter Ca.

3 Lud. 114.

Firſt, it is clear that the act of bribery muſt be proved to be inchoate at leaſt, if not complete before the election, for a diſtribution of money after the election, unleſs coupled with *an act* done or promiſe made before, however it may induce ſuſpicion, will not raiſe a preſumption in a court of juſtice; and therefore in the Sudbury caſe, the counſel waved inſiſting upon that point. Committee will let in evidence of bribery before an election declared void, to affect the ſubſequent new election.

2 Dougl. 137.

3 Lud. 110.

Although the committees have, in moſt inſtances, inclined, with a laudable rigour, againſt every mode of advancing money, or money's worth, yet, in ſome particular caſes, the frequency of the practice ſeems to have blunted the edge of juſtice. Thus, it is ſaid to have been held, and is now, by many, conſidered

Worceſter Ca. 3 Doug. 258. Lud. 36. Ipſwich Ca.

ſidered as law, that where the voter lives at a diſtance it is not bribery to pay his travelling expences. In the Ipſwich caſe it was taken for granted, in the argument on both ſides, that it is lawful to make a reaſonable compenſation for the voter's loſs of time. And yet if we look at the words of the ſtatute, they ſeem too ſtubborn to be bent to this interpretation. For it expreſsly prohibits the *allowing* any money to, or *for the uſe or advantage*, &c. of any perſon having voice *in order to be elected*. Now that paying the travelling expences is *allowing* money for the *uſe* and advantage of the voter, and that it is done *in order to be elected*, though nothing is expreſsly ſtipulated between the parties, is perfectly clear. And it ſignifies nothing to ſay, there is no corruption in this, according to the *general* meaning of bribery, for it is the definition of the written law, we are to make the rule of deciſion. The allowance for time, even though it were leſs than the voter could earn, and ſo, upon the whole, not for his *advantage*, upon the dry, conſideration of money, yet is certainly for his *uſe*, and advantage alſo, if he chuſes to vote to the value of the ſum given, which he would be otherwiſe out of pocket; for the franchiſe, ſhould either be exerciſed *voluntarily* or not at all. By the ſame rule of conſtruction, the advancing money to purchaſe the freedom of a corporation for a voter, or to pay for his

Where argued that money was given "under colour of money for loſs of time." Ib. 41. 48. 61. 3 Lud. 1ſt. Norwich Ca.

admiſſion or enrolment, however ſmall the fees may be, if done in contemplation of the election, and *in order to be elected*, ſeems clearly to be within the letter and ſpirit of the act. In a very recent caſe, however, in which the majority had been admitted to their freedom during the poll, and their admiſſions were regularly beſpoke and paid for by an agent of the party elected, the committee muſt have been of a different opinion, having declared the ſitting member duly elected. At the very time when we are complaining of the exceſs of corruption at elections, we are ſlurring over a law, a vigorous execution of which might check at leaſt, if not eradicate, the evil.

Briſtol Ca. March 1786.

In the Ipſwich caſe, above alluded to, there were various acts of bribery, many of which, ſeparately, were enough to have avoided the election, in ſome of which the candidate himſelf was concerned. And it is neceſſary to prove this; for though there be clearly a diſtribution of money, and evidence ſufficient to ſhew the election influenced thereby, yet it muſt be done by the candidate himſelf, or ſome one on his part, *i. e.* employed by him, to avoid the election; for otherwiſe, any officious or ill-deſigning ſtranger might defeat it. Therefore, in the Ilcheſter caſe, though there were conſiderable ſums diſtributed by a perſon who was afterwards employed as agent by the ſitting member,

Lud. 463.

member, amongſt the voters, at a time when parliament was expected to be diſſolved, which, it appeared in evidence, influenced the next election; yet, as it was not proved to have been done by, or by the order of the ſitting member, it was held not to prejudice the election. So where a benefaction was given to the voters of the town, on behalf of the perſon then repreſenting it in parliament, at a time when the diſſolution was expected, in February 1784, it was inſiſted this muſt be ſuppoſed to have influenced the enſuing election, though it did not happen until two years after, and to fall within the imputation of bribery, alledged in avoidance of the election, but the election was held good. It is poſſible that the committee might not believe the witneſſes, or might think it not brought home to the principal, or, which is more likely from the argument, that it did not amount bribery. There is ſcarcely any queſtion, indeed, of ſo nice a nature, which occurs in election cauſes, as that of agency to ſuch an extent as to affect the principal for acts of bribery. An agent, in the moſt ſimple ſenſe of the word, is one who acts for another, by his expreſs or implied authority. He may be an agent either for the general purpoſes of the election, or for ſpecial purpoſes only. It is impoſſible to lay down a rule by which ſuch a queſtion may be tried. It depends upon a variety of circumſtances

3 Lud. 110.

3 Lud. 162. Honiton.

Vid. 3 Doug. 263.

ſtances combined together, from whence the committee, as jurors, form their belief. In the Mitchell caſe, H. ſtood on lord F.'s intereſt; C. who was lord F.'s ſteward, canvaſſed with H. and aſked votes for him privately; and C. and H. dwelt in the ſame houſe together within the borough. This was held inſufficient proof of agency to criminate H. for acts of bribery by C. one of the counſel for the petitioner in that caſe, in the courſe of his argument, ſtated the following determination as having been ruled in the Cricklade caſe. M. ſtood on lord P.'s intereſt; B. was ſteward to lord P. and canvaſſed for him together with lord P. who was then a commoner. Under theſe circumſtances, evidence of B.'s acts of bribery was received againſt M. If this laſt caſe is accurately ſtated in argument, the two determinations are not very conſiſtent, and plainly ſhew the queſtion muſt always be reſolved on its grounds, independent of precedent. In tranſactions which do not involve any penalty or forfeiture, the principal is bound by the acts of his agent. Thus notice to the agent of any prior equity, or incumbrance, in making a purchaſe, or taking a mortgage, is notice to the principal, ſo as to let in the prior claim. So alſo the maſter is liable, in many inſtances, *civiliter*, though not *criminaliter*, for the acts of his ſervant. In the ſame manner, the ſheriff is *civiliter* liable for all the acts of his under-

Lud. 89. Mitchell Ca.

der-ſheriff or bailiffs. The rule ſeems very properly applied to the caſe of bribery; but as the conſequences are ſevere, the relation of principal and agent ſhould be fully eſtabliſhed. There is nothing which has produced ſo great a contrariety of determination as the queſtion in election cauſes, how far the proof of bribery by a perſon, ſhall be admitted, ſo as to affect the principal, before the agency of that perſon has been proved. In the Hindon, the Shaftſbury, the Worceſter and Norwich caſes it was held, that agency ſhould firſt be proved: but in the Briſtol and Ivelcheſter caſes, the proof of bribery was taken *de bene eſſe* till the proof of agency ſhould be eſtabliſhed, and in the latter caſe, it was ſaid, that though the rule had at firſt been laid down in the Shaftſbury caſe, it was afterwards, from its inconvenience, departed from; and in the ſecond Ivelcheſter caſe, and in the Mitchel caſe, proof of bribery was admitted before, but ſubject to the proof of agency. On ſuch proof of bribery by the agent, where there has been a general charge of bribery by the adverſe party and his agents, in the petition, it has occaſioned doubts how far he is a competent witneſs to contradict the evidence which criminates him. In the St. Ive's and Worceſter caſes he was admitted to diſprove or explain that evidence; but in the Milborn Port and Shaftſbury caſes, he was held incompetent. But as he is not directly impeached

1 Doug. 173.
2 Doug. 310.
3 Doug. 263.
1 Doug. 280.
3 Doug. 161.
3 Lud. 451.
1 Lud. 469.
Lud. 470.
Ib. 83.
2 Doug.
Ib. 272. S. P.
Ib. 1 v. 134.
Ib. 2. v. 308.

impeached as a party in the cauſe, ſo as to put the fact ſtrictly in iſſue, as to him, it ſeems hard to exclude him as incompetent upon a prejudication of his guilt, formed on *ex parte* evidence. What credit he deſerves, is another conſideration, reſulting from the compariſon of their reſpective teſtimonies. When the voter had taken the bribery oath at the election, he has not been ſuffered to be examined to prove that he had taken a bribe. And his declarations as to that, were alſo refuſed. But in Buſh *v.* Rawlins, B. R. 29 G. 2. it was ſolemnly determined, that the party bribed may be a witneſs to prove the bribery.

1735. 12 Feb. 1769. 14 Mar. 3 Lud. 111. and another caſe there cited, & ſee Append. to the Elgin Ca. 385.

Conſequences of bribery.

The conſequence ariſing from the determination of the committee, that a candidate or his agent has been guilty of bribery, by the common law of parliament, as we have already ſhewn, is an avoidance of the election. By the act of king William, the penalty, according to the ſtrict meaning of the words, is not carried further. By the words of the reſolution, on which the ſtatute is formed, and which therefore is a key for explaining it, the offence "makes every *ſuch election* void as to the perſon ſo offending, and renders the perſon ſo elected incapable to ſit in parliament by *ſuch election*." By the ſtatute, "he is incapacitated upon *ſuch election* to ſerve in parliament; and he is thereby declared to be to *all intents, &c.* "*as if he had never been returned or elected*

member

member for the parliament." It is obſervable, that the words of the reſolution, after having declared the *election void* as to ſuch perſon, adds further words of incapacitation to ſit *on ſuch election.* Now to put the ſame conſtruction on both parts, is to make the ſtatute *actum agere*; and yet to extend the latter part upon inference of a double meaning beyond the words "*ſuch election,*" would be repugnant to that rule of conſtruction which ſays, "*Expreſſio facit ceſſare tacitum*;" ſuppoſing that ſuch an implication aroſe, which it does not neceſſarily, becauſe the clauſe is in the conjunctive. The words of the ſtatute are not wider than thoſe of the reſolution, and the addition of the laſt clauſe above ſtated, which puts him *to all intents*, into the ſituation of not having been returned, leaves him clearly eligible upon a re-election, becauſe by the common law of parliament, independent of the ſtatute, he remains eligible, notwithſtanding the bribery. The conſtruction, however, has been conſiderably extended, it having been held that he is not eligible *upon the ſame vacancy*, though on the iſſuing of a new writ; and in the Thetford caſe, the incapacitation was extended to repreſent *that place during that parliament.* In the Kirkcudbright caſe, the committee on petition having found that Gordon the ſitting member, had been guilty of bribery; on petition by Johnſton, againſt his re-election, after notice of his incapacity to the electors, his

13 Jour. p. 145. 252.

his election was reſolved void, and that Johnſton was elected and ought to have been returned.

It is ſaid alſo, that in the Worceſter caſe in 1774, where the election of the ſitting member was declared void on a petition for bribery, and in the Ipſwich caſe in 1784, where the like reſolution took place on a ſimilar petition, the ſitting members ſo affected by thoſe reſolutions, were adviſed not to ſtand again, as being ineligible by reaſon of thoſe reſolutions. And in 1777 general Smith's re-election was declared void, his firſt election for the ſame place having been avoided for bribery. But in the 2d Norwich caſe, decided in 1787, ſince the firſt publication of this book a different conſtruction of the act has taken place. For on petition againſt the re-election of Hobart, (whoſe 1ſt election had been declared void upon a petition, for bribery, and treating, contrary to the act) ſtating the firſt election, petition and reſolution, which was charged to be on the ground of bribery, without any freſh averment of bribery either on the firſt or ſecond election; the committee declared him *duly elected*.

Some doubt might have ariſen upon the caſe as reported, whether this deciſion was founded on deficiency of proof, or inſufficiency of the petition itſelf, or upon the conſtruction of the ſtatute, *viz.* whether the diſability ariſing from bribery or treating ſhould extend to a future

future election upon the ſame vacancy. But ſome private reſolutions of the committee, not entered upon their minutes, but communicated by the chairman, ſhewed that the deciſion was founded on the conſtruction of the ſtatute.

Mr. Juſtice Blackſtone from the extent and labour of his plan, has ſo far overlooked the minutiæ of the ſtatute, as to lay it down generally, without any limitation of time, that "he is incapable of ſerving for that place in parliament;" which, when compared with the ſtatute, is plainly an inaccuracy. To look for minute exactneſs in every part of ſo comprehenſive a work, would be to expect a perfection more than human.

Bl. Com. vol. 1. p. 178.

Vide 2 Dougl. 412.

The ſubſequent act of G. 2. ſeems to have had a more rigorous interpretation than the ſtatute of King William; for the offence of corruption has been deemed complete, ſo as to ſubject the giver or promiſer to the penalty, though the perſon who takes it votes afterwards for another. And giving money to forbear to vote, though the party has not forborne to vote, has alſo been adjudged bribery. The words are, "*do corrupt or procure any perſon to give or forbear his vote.*" In ſuch caſe he is ſaid "to corrupt the voter to give his vote," though the voter in fact does not give his vote; and yet it is difficult to conceive how, in ſtrictneſs, a man can be ſaid to "corrupt" another, if the other is not, according to the ſame

2 G. 2. c. 24.

Buſh v. Rawlins, B. R. 29 G. 2. 3 Burr. 1235. 4 Burr. 250.

ſame idea, "corrupted." It may be ſaid the giving of his vote *againſt* the intended bias, leaves the ſtigma of *fraud* upon the receiver, in having taken a gift under the pretence of being corrupted. If, however, he took the gift with a corrupt intention, which it is proved he did (for the act of the party affords that proof), then no ſubſequent alteration of diſpoſition, from whatever motive, can undo the "corruption" once complete; for certainly the performance of the ſervice, though it is neceſſary to complete the "*contract*," is only external evidence of the act of the mind, which conſiſted in the *agreement*. The conſtruction therefore, though it ſeems ſevere, is ſtrictly right, and ſhews the ſolid foundation on which a great law lord oppoſed the new bill againſt bribery, which, though well intended under the notion of modifying election expences, would have juſtified acts, which by the letter of the ſtatute of King William, if properly enforced, are clearly illegal.

Vid. Lud. 68.

The other queſtion put by Mr. Douglas, how far the gratuitous vote of a voter ſo corrupted, is good, if given to another, depends upon the words of the oath preſcribed by the ſtatute, which are, that he has not taken any gift, &c. "in order to give his vote at ſuch election," and ſtates the idea to be, that as he could not take the oath without being perjured, according to the ſtrict meaning of the words, the vote ought not to be allowed,

and

and that is ſaid to have been ſo held in the St. Ive's and Shaftſbury caſes. But his obſervations on the other ſide of the queſtion are very ſtrong, and though the point has been determined, would incline one to doubt the ſoundneſs of the determination.

The next queſtion he puts on the vote of an agent who has bribed others, but has not been bribed himſelf, ſeems clearly to be reſolved by the ſtatute, as a man cannot *bribe* without offending againſt it. Put a ſtronger caſe therefore, that he had corrupted others to give their votes to A, and that they afterwards gratuitouſly voted for B, ſuch agent, if convicted, could have no right to vote, becauſe, by the conſtruction of the act by the judges of the king's bench, in the caſe before alluded to, he would have been guilty of the offence within the act, to which the perpetual diſability of voting is annexed. If ſuch agent being an elector, and authoriſed to bribe, uſe only juſtifiable means of perſuading the voters, without corrupting them, their votes are ſaid to have been held bad by a majority of one in the court of ſeſſion, upon the Stirling caſe; upon what principle, it is difficult to ſay, as it does not fall within any poſitive ſtatute, and the freedom of election, in the very ſtatement of the caſe, appears not to have been violated.

3 Lud. 114.

Sulſton v. Norton. 3 Burr. 1235.

Vid. 2 Dougl. 418.

Theſe are the principal cauſes of avoiding an election, all of which are but corollaries flowing from one great principle, "That

elections ſhould be free." Upon the preſervation of this vital principle, not only the proſperity, but the very exiſtence of the ſtate as a free ſtate, depends. The violation of this, even in the earlieſt days of repreſentation, called forth the ſpirited, though feeble voice of the people, who ſtamped upon record this maxim, "That elections ſhould be free." To this principle, and the due exertion of that ſpirit which it produces, we owe the ſignal triumph of having ſeen, in the reign of H. 6. the infamous proceedings of a parliament garbled by the crown without the ſuffrages of the people, ſwept away by the firſt breath of the ſucceeding parliament, and the freedom of election reſtored, and ſtrengthened by the moſt open and unequivocal declaration of the legiſlature. To this principle we owe a ſucceſsful oppoſition to the proclamations of James the Firſt, who would have over-awed the free voice of the people by reſtraining edicts, founded in the very ſpirit of deſpotiſm. To a laudable anxiety for preſerving this, we owe the continuation of thoſe chartered liberties, which the ſacrilegious hand of Charles the Second would have raviſhed from us. The firm and well directed ſpirit of the Revolution, ſteering between the extremes of republican licentiouſneſs and ſervile obedience, again recorded the principle as one of the conditions of loyalty, and has fixed this natural and chartered right upon an unperiſhable foundation.

3 E. 1. c. 5.

39 H. 6. repeals all the acts of the preceding parliament at Coventry.

5 v. Parl. Hiſt. p. 4. Hatſell's Prec. v. 2. p. 31.

1 W. & M. 2 ſeſſion, c. 2.

APPENDIX.

No. I.

Anno 10° Geo. III. Cap. 16.

An Act to regulate the Trials of controverted Elections, or Returns of Members to ſerve in Parliament.

WHEREAS the preſent mode of deciſion upon petitions, complaining of undue elections or returns of members to ſerve in Parliament, frequently obſtructs public buſineſs; occaſions much expence, trouble, and delay to the parties; is defective, for want of thoſe ſanctions and ſolemnities which are eſtabliſhed by law in other trials; and is

Good-Friday *is added to the excepted days of* 10 G. 3. *by* 25 G. 3. *c.* 52 *ſ.* 10.

By 25 G. 3. *c.* 84. *ſ.* 10.—*this ſtatute is extended to caſes where* no return *has been made, and caſes where a* ſpecial return *has been made.*

By 28 G. 3. *c.* 52. *ſ.* 1.—*no petition ſhall be proceeded upon unleſs* ſubſcribed *by the petitioner, in manner therein mentioned: nor (by ſ.* 5.*) unleſs, within fourteen days, he enters into recognizance in two hundred pounds, and two ſureties of one hundred pounds each, to appear and to renew the petition; but the petition ſhall be diſcharged unleſs the Houſe enlarge the time for entering into the recognizance.*

attended with many other inconveniencies: for remedy thereof, be it enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That after the end of the preſent ſeſſion of Parliament, whenever a petition, *complaining of an undue election or return* of a member or members to ſerve in Parliament, ſhall be preſented to the Houſe of Commons, a day and hour ſhall by the ſaid Houſe be appointed for taking the ſame into conſideration; *and notice thereof in writing ſhall be* forthwith given, by the Speaker, *to the petitioners and the ſitting members*, or their reſpective agents, accompanied with an order to them to attend the Houſe, at

The recognizance muſt be entered into to the Speaker, and the ſufficiency of the ſureties muſt, if neceſſary, be certified to him.

Sureties living more than forty miles from London, may enter into recognizance before a juſtice.

And affidavits made before a Maſter in Chancery, or before any juſtice, may be received in evidence of the ſufficiency of a ſurety.

And the recognizances, if broken, ſhall be certified into the Exchequer by the Speaker, and the certificate and recognizance ſhall be delivered in by the clerk or clerk aſſiſtant.

By the ſame ſtatute, ſ. 3.— if the ſitting member petitioned againſt die, be made a peer, have his ſeat vacated, or refuſe to defend the petition, any voter, after notice (purſuant to ſ. 2.), may, on petition within thirty days, be admitted a party to defend.

And (by ſ. 4.) the member petitioned againſt, and not defending, ſhall not interfere in the petition, nor ſit in the Houſe, till the matter be decided.

By 11 G. 3. c. 42. ſ. 1.— the like notice is required to all parties, where diſtinct parties preſent ſeparate petitions.

And, by 25 G. 3. c. 84. ſ. 12 —if the returning officer cannot be found, to be ſerved with notice, or will not appear, the Houſe may permit or authoriſe any other to appear for him.

By

the time appointed, by themſelves, their counſel, or agents.

By 28 *G.* 3. *c.* 52. *ſ.* 2.—*if any ſitting member, whoſe election or return is complained of, die, be made a peer, or have his ſeat declared void by the Houſe, or gives notice in writing he will not* defend, notice *is to be ſent by the Speaker to the returning officer, who muſt give notice in the county and borough as therein mentioned, and the hearing may be adjourned to the end of thirty days, from notice in the Gazette.*

II. Provided always, That no ſuch petition ſhall be taken into conſideration within fourteen days after the appointment of the committee of privileges.

By 11 *G.* 3. *c.* 42. *ſ.* 2.—*ſhall not be taken into conſideration within fourteen days after the beginning of the ſeſſion in which preſented, nor within fourteen days after the return.*

III. Provided alſo, That the Houſe may alter the day and hour ſo appointed for taking ſuch petition into conſideration, and appoint ſome ſubſequent day and hour for the ſame, as occaſion ſhall require; giving to the reſpective parties the like notice of ſuch alteration, and order to attend on the ſaid ſubſequent day and hour, as aforeſaid.

IV. And be it further enacted, That at the time appointed for taking ſuch petition into conſideration, and previous to the reading the order of the day for that purpoſe, the ſerjeant at arms

By 11 *G.* 3. *c.* 42. *ſ.* 3.—*the Houſe ſhall adjourn,* if forty-nine members, *not ſet aſide nor excuſed, cannot be completed.*

By 25 *G.* 3. *c.* 52. *ſ.* 10.—Good-Friday *is excepted out of the regulations of the former acts.*

ſ. 11.—*If the day for proceeding on the petition be the*

ſhall be directed to go with the mace to the places adjacent, and require the immediate attendance of the members on the buſineſs of the Houſe; and that after his return the Houſe ſhall be counted, and if there be leſs than *one hundred* members preſent, the order for taking ſuch petition into conſideration ſhall be immediately adjourned to a particular hour *on the following day*, Sunday and Chriſtmas Day always excepted; and the Houſe ſhall then adjourn to the ſaid day; and the proceedings of all committees, ſubſequent to ſuch notice from the ſaid ſerjeant, ſhall be void: and, on the ſaid following day, the Houſe ſhall proceed in the ſame manner; and ſo, from day to day, till there be an attendance of one hundred members at the reading the order of the day, to take ſuch petition into conſideration.

day preceding Chriſtmas-Day, Witſunday, *or* Good Friday, *the Houſe may adjourn the order for* any number of days.

By 28 G. 3. *c.* 52. *ſ.* 12.—*the Houſe may receive a report from a ſelect committee of elections, and enter it on the journals—may alter or amend a return—may attend the King, or Lords Commiſſioners, in the Houſe of Lords,* previous *to the order of the day.*

V. And be it further enacted, That if after ſummoning the members, and counting the Houſe, as aforeſaid, one hundred members ſhall be found to be preſent; *the petitioners*, by themſelves, their counſel, or agents, and the coun-

By 28 G. 3. *c.* 52. *ſ.* 13.—*the ſubſcribing petitioner or petitioners muſt appear* within an hour *after the time fixed for appointing a ſelect committee, or the order for taking ſuch petition into conſideration ſhall be diſcharged.*

By ſ. 14. *the party* defending *muſt alſo appear within an hour, or the petitioner ſhall proceed as therein directed.*

ſel

ſel or agents of the ſitting members, *ſhall be ordered to attend at the bar*; and then the door of the Houſe ſhall be locked, and no member ſhall be ſuffered to enter into or depart from the Houſe until the petitioners, their counſel, or agents, and the counſel or agents for the ſitting members, ſhall be directed to withdraw, as herein-after is mentioned: and when the door ſhall be locked as aforeſaid, the order of the day ſhall be read, and the names of all the members of the Houſe, written or printed on diſtinct pieces of parchment or paper, being all as near as may be of equal ſize, and rolled up in the ſame manner, ſhall be put in equal numbers into ſix boxes or glaſſes, to be placed on the table for that purpoſe, and ſhall be there ſhaken together; and then the clerk or clerk aſſiſtant attending the Houſe ſhall publickly draw out of the ſaid ſix boxes or glaſſes, alternately, the ſaid pieces of parchment or paper, and deliver the ſame to the Speaker, to be by him read to the Houſe; and ſo ſhall continue to do, until forty-nine names of the members then preſent be drawn.

VI. Provided always, That if the name of any member who ſhall have given his vote at the election ſo complained of as aforeſaid, or who ſhall be a petitioner complaining of an undue election or return, or againſt whoſe return a petition ſhall be then depending, or whoſe return ſhall not have been brought in fourteen days, ſhall be drawn; his name ſhall be ſet aſide, with the names of thoſe who are abſent from the Houſe.

VII. Provided alſo, That if the name of any member of ſixty years of age or upwards, be drawn, he ſhall be excuſed from ſerving on the ſelect committee, to be appointed as herein-after is mentioned, if he require it, and verify the cauſe of ſuch requiſition upon oath.

VIII. Provided alſo, That if the name of any member who has ſerved in ſuch ſelect committee during the ſame ſeſſion be drawn, he ſhall, if he requires it, be excuſed from ſerving again in any ſuch ſelect committee, unleſs the Houſe ſhall, before the day appointed for taking the ſaid petition into conſideration, have reſolved, that the number of members who have not ſerved on ſuch ſelect committee, in the ſame ſeſſion, is inſufficient to fulfil the purpoſes of this act, reſpecting the choice of ſuch ſelect committee.

IX. Provided always, That no member who, after having been appointed to ſerve in any ſuch ſelect committee, ſhall, on account of inability or accident, have been excuſed from attending the ſame throughout, ſhall be deemed to have ſerved on any ſuch ſelect committee.

X. And be it further enacted, That if any other member ſhall offer and verify upon oath any other excuſe, the ſubſtance of the allegations ſo verified upon oath ſhall be taken down by the ſaid clerk, in order that the ſame may be afterwards entered on the journals, and the opinion of the Houſe ſhall be taken thereon; and if the Houſe ſhall reſolve, that the

the ſaid member is unable to ſerve, or cannot without great and manifeſt detriment ſerve in ſuch ſelect committee, he alſo ſhall be excuſed from ſuch ſervice.

* XI. And be it further enacted, that inſtead of the members ſo ſet aſide and excuſed, the names of other members ſhall be drawn; who may, in like manner, be ſet aſide or excuſed, and others drawn to ſupply their places, until the whole number of forty-nine members, not liable to be ſo ſet aſide or excuſed, ſhall be complete; *and the petitioners, or their agents, ſhall then name one, and the ſitting members, or their agents, another*, from among the members then preſent, whoſe names ſhall not have been drawn, to be added to thoſe who ſhall have been ſo choſen by lot.

* *By* 11 *G.* 3. *c.* 42. *ſ.* 6. —*if there are more than two parties before the Houſe* with diſtinct intereſts, *they ſhall ſtrike off the members ballotted; priority of ſtriking to be determined by lot; and the committee of thirteen ſhall chuſe two as nominees.*

By 28 *G.* 3. *c.* 52. *ſ.* 14.—*if a party petitioned againſt does not defend, in reducing the liſt to thirteen, the place of a party oppoſing ſuch petition ſhall be ſupplied by the clerk appointed to attend the committee; and the thirteen ſhall chuſe the nominee.*

Ibid. ſ. 15.—*The ſame rule ſhall be followed when a party waives his right of ſtriking off or naming a nominee.*

XII. Provided always, That either of the members ſo nominated ſhall or may be ſet aſide, for any of the ſame cauſes as thoſe

* On croſs petitions, complaining of returning officer's conduct in a ſpecial return, *he* was not ſuffered to ſtrike as a party, but only to attend by counſel in the committee.

choſen

choſen by lot; or ſhall, if he requires it, be excuſed from ſerving on the ſaid ſelect committee; and the party who nominated the member ſo ſet aſide, or excuſed, ſhall nominate another in his ſtead, and ſo continue to do as often as the caſe ſhall happen, until his nomineee is admitted.

By 11 G. 3. c. 42. ſ. 4.—the Houſe is not to proceed to any other buſineſs except the ſwearing of members, previous to the reading of the order for conſidering the petition.

XIII. And be it further enacted, That as ſoon as the ſaid forty-nine members ſhall have been ſo choſen by lot, and the two members to be added thereunto ſhall have been ſo nominated as aforeſaid, the door of the Houſe ſhall be opened, and *the Houſe may proceed upon any other buſineſs*; and liſts of the forty-nine members ſo choſen by lot ſhall then be given to the petitioners, their counſel, or agents, and the counſel or agents for the ſitting members, who ſhall immediately withdraw, together with the clerk appointed to attend the ſaid ſelect committee; *and the ſaid petitioners and ſitting members*, their counſel or agents, beginning on the part of the petitioners, *ſhall alternately ſtrike off one* of the ſaid forty-nine members, until the ſaid number ſhall be reduced to thirteen; and the ſaid clerk, within one hour at fartheſt from the time of the parties withdrawing from the Houſe, ſhall deliver in to the Houſe the names of the thirteen members then remaining; and the ſaid thirteen members, together with the two members nominated as aforeſaid, ſhall be ſworn at the table, well and truly to try the matter of the petition referred to them,

Vid. 11 G. 3. c. 42. ſ. 6. and 28 G. 3. c. 52. ſ. 14, 15. in p. vii of the Appendix.

and

and a true judgment to give according to the evidence; and ſhall be a ſelect committee to try and determine the merits of the return or election appointed by the Houſe to be that day taken into conſideration; and the Houſe ſhall order the ſaid ſelect committee to meet at a certain time to be fixed by the Houſe, which time ſhall be wi hin twenty-four hours of the appointment of the ſaid ſelect committee, unleſs a Sunday or Chriſtmas-Day ſhall intervene; and the place of their meeting and ſitting ſhall be ſome convenient room or place adjacent to the Houſe of Commons, or Court of Requeſts, properly prepared for that purpoſe.

XIV. Provided always, That on the parties withdrawing as aforeſaid, the Houſe ſhall continue ſitting; and the ſaid fifty-one members, ſo choſen and nominated, ſhall not depart the Houſe until the time for the meeting of the ſaid ſelect committee ſhall be fixed.

XV. Provided always, and be it further enacted, That if upon the drawing out the name of any member by lot, as aforeſaid, the ſaid petitioners or ſitting members, or their agents, ſhall declare, that ſuch member is intended to be one of the two nominees to be nominated by them reſpectively, and if ſuch member ſhall conſent to ſuch nomination, the name of ſuch member ſo drawn by lot ſhall be ſet aſide, and, unleſs objected to as aforeſaid, he ſhall ſerve as ſuch nominee, and the name of another member ſhall be drawn to ſupply his place, to complete the number of forty-

See the notes on ſ. 11.

forty-nine members to be drawn by lot; and if the ſaid petitioners or ſitting members, or their agents, ſhall not reſpectively nominate a member then preſent, who ſhall be admitted according to the directions of this Act, then the want of ſuch nomination ſhall be ſupplied, by drawing out, inſtead thereof, the name of one or two members, as the caſe ſhall require; who ſhall be drawn by lot in the like manner, and ſubject to the like objections and excuſes, as the other forty-nine members already drawn by lot, and ſhall be added to the liſts of the ſaid forty-nine members, and ſhall be liable to be ſtruck off in the ſame manner; leaving always the number of fifteen members in the whole, and no more, as a ſelect committee for the purpoſes aforeſaid.

XVI. And, for the greater diſpatch and certainty in the proceeding herein before deſcribed, be it further enacted, That the names of all the members ſo written and rolled up as herein before directed, ſhall, previous to the day appointed for taking any ſuch petition into conſideration, be prepared by the ſaid clerk, or clerk aſſiſtant, and by him put into a box or parcel, in the preſence of the Speaker, together with an atteſtation, ſigned by the ſaid clerk, or clerk aſſiſtant, purporting, that the names of all the members were by him put therein the day of in the year which ſaid box or parcel the Speaker ſhall ſeal with his own ſeal; and to the out-ſide thereof ſhall annex an atteſtation ſigned by himſelf, purporting, that the ſaid box or parcel was on the day of in the year made

made up in his preſence, in the manner directed by this Act; and that as ſoon as the parties ſhall be withdrawn as aforeſaid, and before the Houſe ſhall enter on any other buſineſs, any member may require that the names of all the members, which remain undrawn, ſhall be drawn and read aloud by the ſaid clerk or clerk aſſiſtant.

XVII. And be it further enacted, That the ſaid ſelect committee ſhall, on their meeting, elect a chairman from and among ſuch of the members thereof as ſhall have been choſen by lot; and if in the election of a chairman, there be an equal number of voices, the member whoſe name was firſt drawn in the Houſe ſhall have a caſting voice; ſo likewiſe, in caſe there ſhould ever be occaſion for electing a new chairman, on the death or neceſſary abſence of the chairman firſt elected.

XVIII. And be it further enacted, That the ſaid ſelect committee ſhall have power to ſend for perſons, papers, and records; and ſhall examine all the witneſſes who come before them upon oath; and ſhall try the merits of the return, or election, or both; and ſhall determine, by a majority of voices of the ſaid ſelect committee, whether the petitioners or the ſitting members, or either of them, be duly returned or elected,

By 28 G. 3. c. 52. ſ. 16.— witneſſes not attending on Speaker's warrant, or by order of committee, or refuſing to give evidence, or giving falſe evidence, or prevaricating, or otherwiſe miſbehaving; may be committed on a warrant of chairman, for any time not exceeding twenty-four hours, if the Houſe be ſitting; or, if adjourned, not exceeding twenty-four hours after the hour to which it is adjourned.

elected, or whether the election be void; which determination shall be final between the parties to all intents and purposes: and the House on being informed thereof by the chairman of the said select committee, shall order the same to be entered in their journals, and give the necessary directions for confirming or altering the return, or for the issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require.

XIX. And be it further enacted, That the said select committee shall sit every day (Sunday and Christmas-Day only excepted), and shall *never adjourn for a longer time than twenty-four hours*, unless a Sunday or Christmas-Day intervene, without leave first obtained from the House, upon motion, and special cause assigned for a longer adjournment; and in case the House shall be sitting at the time to which the said select committee is adjourned, then the business of the House shall be stayed, and a motion shall be made for a further adjournment, for any time to be fixed by the House, not exceeding twenty-four hours, unless a Sunday or Christmas-Day intervene.

By 11 G. 3. c. 42. s. 5.—if the committee have occasion to apply to the House for adjournment on any account, and the House be adjourned for more than three days, the committee may adjourn to the time of the House meeting.

XX. And be it further enacted, That where the time prescribed by this Act for the meeting, sitting, or adjournment of the said select committee, shall, by the intervention of a Sunday or Christmas-day, exceed twenty-four hours,

hours, ſuch meeting, ſitting, or adjournment, ſhall be within twenty-four hours from the time of appointing or fixing the ſame, excluſive of ſuch Sunday or Chriſtmas-Day.

XXI. And be it further enacted, That no member of the ſaid ſelect committee ſhall be allowed to abſent himſelf from the ſame, without leave obtained from the Houſe, or an excuſe allowed by the Houſe at the next ſitting thereof, on ſpecial cauſe ſhewn and verified upon oath; and the ſaid ſelect committee ſhall never ſit, until all the members to whom ſuch leave has not been granted, nor excuſe allowed, are met; and in caſe they ſhall not all meet within one hour after the time to which the ſaid ſelect committee ſhall have been adjourned, a farther adjournment ſhall be made in the manner as before directed, and reported, with the cauſe thereof, to the Houſe.

XXII. And be it further enacted, That the chairman of the ſaid ſelect committee ſhall, at the next meeting of the Houſe, always report the name of every member thereof who ſhall have been abſent therefrom without ſuch leave or excuſe as aforeſaid; and ſuch member ſhall be directed to attend the Houſe at the next ſitting thereof, and ſhall then be ordered to be taken into the cuſtody of the ſerjeant at arms attending the Houſe, for ſuch neglect of his duty, and otherwiſe puniſhed or cenſured at the diſcretion of the Houſe; unleſs it ſhall appear to the Houſe, by facts ſpecially ſtated and verified upon oath, that ſuch member was, by a ſudden accident, or by neceſſity, prevented from attending the ſaid ſelect committee.

XXIII. And be it further enacted, That if more than two members of the ſaid ſelect committee ſhall on any account be abſent therefrom, the ſaid ſelect committee ſhall adjourn in the manner herein before directed; and ſo, from time to time, until thirteen members are aſſembled.

XXIV. And be it further enacted, That in caſe the number of members able to attend the ſaid ſelect committee ſhall, by death or otherwiſe, be unavoidably reduced *to leſs than thirteen*, and ſhall ſo continue for the ſpace of three ſitting days, the ſaid ſelect committee ſhall be diſſolved, and another choſen to try and determine the matter of ſuch petition in manner aforeſaid; and all the proceedings of the ſaid former ſelect committee ſhall be void, and of no effect.

By 28 *G.* 3. *c.* 52. *ſ.* 17.—*if a committee ſhall have ſat for buſineſs fourteen days, twelve members may proceed therein; and if twenty-five days, eleven members may proceed; and in ſuch caſe, the committee not diſſolved, unleſs the numbers reduced under eleven, for three ſitting days.*

XXV. And be it further enacted, That if the ſaid ſelect committee ſhall come to any reſolution other than the determination above mentioned, they ſhall, if they think proper, *report the ſame* to the Houſe for their opinion, at the ſame time that the chair-

By 28 *G.* 3. *c.* 52. *ſ.* 18, 19.—*committee may report whether the petition or defence appear to them frivolous or vexatious.*

ſ. 25.—*directs how to proceed when they report upon the right of* election, *or chuſing a returning-officer; and ſee the remaining ſections of the notice given on ſuch report, and the proceedings by petition in conſequence of it.*

By ſ. 20.—*ſuch perſons* ſigning *the petition may recover*

than of the said select committee shall inform the House of such determination; and the House may confirm or disagree with such resolution, and make such orders thereon, as to them shall seem proper.

cover full costs incurred in prosecuting it.

s. 21.—Where no party appears in opposition to petition, the costs shall be paid by the sitting members, if they have not given notice of their intending not to defend the same, or against such parties as come in (under the 2d section) to defend such petition.

s. 22.—prescribes the mode of taxing the costs, and by whom.

s. 23.—They must be paid on demand, or may be recovered by action of debt, &c.

s. 23.—Persons paying costs may recover a proportion over.

XXVI. Provided always, That if any person summoned by the said select committee, shall disobey such summons; or if any witness before such select committee shall prevaricate, or shall otherwise misbehave in giving, or refusing to give evidence; the chairmen of the said select committee, by their direction, may at any time, during the course of their proceedings, report the same to the House, for the interposition of their authority or censure, as the case shall require.

Vide note on section 18.

XXVII. And be it further enacted, That whenever the said select committee shall think it necessary to deliberate among themselves, upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition referred to them as aforesaid; as soon as the said select committee shall have heard the evidence and counsel on

both ſides relative thereunto, the room or place wherein they ſhall ſit ſhall be cleared, if they ſhall think proper, while the members of the ſaid ſelect committee conſider thereof; and all ſuch queſtions, as well as ſuch determination, and all other reſolutions, ſhall be by a majority of voices; and if the voices ſhall be equal, the chairman ſhall have a caſting voice.

XXVIII. Provided always, That no ſuch determination as aforeſaid ſhall be made, nor any queſtion be propoſed, unleſs thirteen members ſhall be preſent; and no member ſhall have a vote on ſuch determination, or any other queſtion or reſolution, who has not attended during every ſitting of the ſaid ſelect committee.

XXIX. And be it further enacted, That the oaths by this Act directed to be taken in the Houſe, ſhall be adminiſtered by the ſaid clerk or clerk-aſſiſtant, in the ſame manner as the oaths of allegiance and ſupremacy are adminiſtered in the Houſe of Commons; and that the oaths by this Act directed to be taken before the ſaid ſelect committee, ſhall be adminiſtered by the clerk attending the ſaid ſelect committee; and that all perſons who ſhall be guilty of wilful and corrupt perjury in any evidence which they ſhall give before the Houſe, or the ſaid ſelect committee, in conſequence of the oath which they ſhall have taken by the direction of this Act, ſhall, on conviction thereof, incur and ſuffer the like pains and penalties to which any other perſon,

perſon, convicted of wilful and corrupt perjury, is liable by the laws and ſtatutes of this realm.

XXX. And be it further enacted, That this Act ſhall continue in force ſeven years, and till the end of the ſeſſion of Parliament next after the expiration of the ſaid ſeven years, and no longer.

(Enlarged by 11 *Geo.* 3. *c.* 46. *Made perpetual by* 14 *Geo.* 3. *c.* 15.*)*

No. II.

Anno 11° Geo. III. Cap. 42.

An Act to explain and amend an Act, made in the laſt Seſſion of Parliament, intituled, An Act to regulate the Trials of controverted Elections, or Returns of Members to ſerve in Parliament.

WHEREAS an Act was paſſed in the laſt ſeſſion of Parliament, intituled, *An Act to regulate the trials of controverted elections or returns of members to ſerve in Parliament:* And whereas further proviſions may be neceſſary to prevent all obſtructions and difficulties, which in certain caſes may ariſe in the execution of the ſaid Act; be it therefore enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords Spiritual and

Temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That from and after the paſſing of this Act, if ſeveral parties, on diſtinct intereſts or grounds of complaint, ſhall preſent ſeparate petitions, complaining of an undue election, or return of a member or members to ſerve in Parliament, the ſame notices and orders ſhall be given to all ſuch parties, or their reſpective agents, as by the ſaid Act are directed to be given to the ſitting members, or the petitioners therein mentioned, or their reſpective agents.

II. And be it further enacted, That the clauſe in the ſaid Act which provides, that no petition ſhall be taken into conſideration within fourteen days after the appointment of the committee of privileges, be repealed; and that from henceforth no petition, complaining of an undue election, or return of a member or members to ſerve in Parliament, ſhall be taken into conſideration within fourteen days after the commencement of the ſeſſion of Parliament in which it is preſented, nor within fourteen days after the return to which it relates, ſhall be brought into the office of the clerk of the crown.

III. And be it further enacted, That if at the time of drawing by lot the names of the members, in manner preſcribed by the ſaid Act, the number of forty-nine members, not ſet aſide nor excuſed, cannot be completed, the Houſe ſhall proceed in the manner they are directed by the ſaid Act to proceed, in caſe there be leſs than one hundred members preſent

preſent at the time therein preſcribed for counting the Houſe; and ſo from day to day, as often as the caſe ſhall happen.

IV. And be it further enacted, That on the day appointed for taking any petition, complaining of an undue election, or return of a member or members to ſerve in Parliament, into conſideration, the Houſe ſhall not proceed to any other buſineſs whatſoever, except the ſwearing of members, previous to the reading of the order of the day for that purpoſe.

V. And be it further enacted, That if the ſelect committeee ſhall have occaſion to apply or report to the Houſe, in relation to adjournment of the ſaid ſelect committee, the abſence of the members thereof, or the non-attendance or miſbehaviour of witneſſes ſummoned to appear, or appearing before them, and the Houſe ſhall be then adjourned for more than three days, the ſaid ſelect committee may alſo adjourn to the day appointed for the meeting of the Houſe.

VI. And be it further enacted, That if on a complaint by petition of an undue election or return, there ſhall be more than two parties before the Houſe, on diſtinct intereſt, or complaining or complained of upon different grounds, whoſe right to be elected or returned may be affected by the determination of the ſaid ſelect committee, each of the ſaid parties ſhall ſucceſſively ſtrike off a member from the forty-nine members to be choſen by lot, until the ſaid number be reduced to thirteen, in the ſame manner as by the ſaid act is directed for

the ſtriking off a member alternately by the parties therein mentioned; and the liſts of the forty-nine members choſen by lot ſhall, for this purpoſe, be given to all the ſaid parties, and the order in which the ſaid parties ſhall ſo ſtrike off the ſaid members ſhall be determined by lot after they are withdrawn from the bar, and in ſuch caſe, neither of the ſaid parties (there being more than two) ſhall be permitted to name a member to be added to the members ſo drawn by lot as aforeſaid; but that as ſoon as the liſt of thirteen members ſhall be returned by the parties to the Houſe, ſuch thirteen members ſhall immediately withdraw, and ſhall by themſelves chuſe two members then preſent in the Houſe, whoſe names ſhall not have been drawn, to be added to the ſaid thirteen members; and ſhall, within one hour from the time of their withdrawing, report the names of ſuch two members to the Houſe; which two members ſhall be liable to be ſet aſide on the like objections, for which nominees may be ſet aſide by virtue of the ſaid Act: and in caſe ſuch two members, or either of them, ſhall be ſet aſide for any of the cauſes aforeſaid, then the ſaid thirteen members ſhall chuſe one or two other members, as the caſe ſhall require, until two members are choſen, againſt whom none of the objections to nominees mentioned in the ſaid Act ſhall be taken and allowed; and that the names of ſuch two members ſhall be then added to the ſaid liſt of thirteen members; and all the ſaid fifteen members ſhall be ſworn at the table, and they ſhall be the ſelect committee appointed for the purpoſes expreſſed in this and the ſaid former Act.

VII. And be it further enacted, That where the ſaid nominees are by this Act directed to be named by the ſaid thirteen members, no member preſent at the time of the ballot ſhall depart from the Houſe until the time for the meeting of the ſaid ſelect committee ſhall be fixed.

No. III.

Anno 14° Geo. III. Cap. 15.

An Act for making perpetual Two Acts, paſſed in the tenth and eleventh Years of the Reign of His preſent Majeſty, for regulating the Trials of controverted Elections, or Returns of Members to ſerve in Parliament.

WHEREAS an Act, paſſed in the tenth year of the reign of His preſent Majeſty, intituled, *An Act to regulate the trials of controverted elections, or returns of members to ſerve in Parliament*, which act was made to continue for a time limited only: And whereas another Act, paſſed in the eleventh year of the reign of His ſaid Majeſty, intituled, *An Act to explain and amend an Act, made in the laſt ſeſſion of Parliament, intituled, An Act to regulate the trials of controverted elections, or returns of members to ſerve in Parliament*: And whereas the proviſions of the ſaid recited Acts are well adapted to procure to the Commons of this realm a free and impartial trial of controverted

elections of members to ſerve in Parliament, and have been found, by experience, to be practicable and beneficial: May it therefore pleaſe your Majeſty that it may be enacted; and be it enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That the ſaid recited Acts, paſſed in the tenth and eleventh years of His preſent Majeſty, ſhall be, and are hereby made perpetual.

No. IV.

Anno 25° Geo. III. Cap. 84. Sect. 10, 11.

An Act to limit the Duration of Polls and Scrutinies, and for making other Regulations touching the Election of Members to ſerve in Parliament for Places within England *and* Wales, *and for* Berwick upon Tweed; *and alſo for removing Difficulties which may ariſe for want of Returns being made of Members to ſerve in Parliament.*

X. And whereas an Act was paſſed in the tenth year of His preſent Majeſty's reign, intituled, *An Act to regulate the Trials of controverted elections, or returns of members to ſerve in Parliament*; and another Act was paſſed in the eleventh year of His ſaid Majeſty's reign,

reign, for explaining and amending the ſaid former Act: And whereas no proviſion is made therein for the hearing and determining any petition, unleſs the ſame ſhall complain of an undue election or return of members to ſerve in Parliament; be it therefore enacted, That, from and after the firſt day of Auguſt, one thouſand ſeven hundred and eighty-five, if upon any writ or writs to be iſſued for the election of any member or members to ſerve in Parliament, no return ſhall be made to the ſame on or before the day on which ſuch writ is made returnable; or if a writ ſhall have been iſſued during any ſeſſion or prorogation of Parliament, and no return ſhall be made to the ſame within fifty-two days after the day on which ſuch writ bears date; or if the return made in either of ſuch caſes ſhall not be a return of a member or members, according to the requiſition thereof, but contain ſpecial matters only concerning ſuch election; it ſhall and may be lawful for any perſon or perſons, having had, or claiming to have had, a right to vote at ſuch election, or claiming to have had a right to be returned as duly elected thereat, who ſhall think himſelf or themſelves aggrieved, to petition the Houſe of Commons concerning the ſame; and upon ſuch petition being preſented, a day and hour ſhall be appointed for taking the ſame into conſideration, and notice thereof in writing ſhall be forthwith given by the Speaker to the petitioners, and to the returning officer or officers by whom ſuch return ought to have been made, or ſhall have been made, accompanied with an order to him or them to attend the Houſe at the time appointed, by himſelf or themſelves, his

or their counſel or agents; and a ſelect committee ſhall be appointed, according to the directions of the ſaid two recited acts, for regulating the trial of controverted elections; which committee ſhall try and determine whether any, and which of the perſon or perſons named in ſuch petition ought to have been returned, or whether a new writ ought to iſſue; which determination ſhall be final to all intents and purpoſes; and the Houſe being informed thereof by the chairman of the ſaid ſelect committee, ſhall order the ſame to be entered in their journals, and give the neceſſary directions for ordering a return to be made, or for altering the return if made, or for the iſſuing a new writ for a new election, or for carrying the ſaid determination into execution, as the caſe may require.

XI. And be it further enacted, That all and every the rules, regulations, authorities, and powers, given or preſcribed by either of the ſaid recited Acts for regulating the trial of controverted elections, with reſpect to ſelect committees to be appointed by virtue of the ſaid Acts, or either of them, ſhall be in full force and effect with reſpect to ſelect committees to be appointed by virtue of this preſent Act, in as full and ample manner as if the ſame were herein repeated and particularly and ſpecially enacted concerning the ſame.

No. V.

Anno 28° Geo. III. Cap. 52.

An Act for the further Regulation of the Trials of controverted Elections, or Returns of Members to ſerve in Parliament.

WHEREAS, by an Act of Parliament paſſed in the tenth year of the reign of His preſent Majeſty, intituled, *An Act to regulate the trials of controverted elections, or returns of members to ſerve in Parliament*, certain regulations were eſtabliſhed, for a time therein limited, for the trials of controverted elections, or returns of members to ſerve in Parliament: And whereas by an Act paſſed in the eleventh year of the reign of His preſent Majeſty, intituled, *An Act to explain and amend an Act made in the laſt ſeſſion of Parliament, intituled, An Act to regulate the trials of controverted elections, or returns of members to ſerve in Parliament*, further regulations were made therein: And whereas the proviſions of the ſaid Acts were, by an Act paſſed in the fourteenth year of the reign of His preſent Majeſty, continued and made perpetual: And whereas, by an Act paſſed in the twenty fifth year of the reign of His preſent Majeſty, intituled, *An Act to limit the duration of polls and ſcrutinies, and for making other regulations touching the election of members to ſerve in Parliament for places within England and Wales, and for Berwick upon Tweed, and alſo for removing difficulties which may ariſe for want of returns being made of members*

members to ſerve in Parliament, the proviſions of the ſaid Acts were extended, in the manner therein mentioned, to petitions complaining that no return has been made to a writ, iſſued for the election of a member or members to ſerve in Parliament, within the times limited in the ſaid Act, or that ſuch return is not a return of a member or members according to the requiſition of the writ: And whereas it is expedient that further regulations ſhould be made for the execution of the ſaid ſeveral Acts, and that proviſion ſhould be made for diſcouraging perſons from preſenting frivolous or vexatious petitions, or ſetting up frivolous or vexatious defences, in any of the caſes to which the above-recited Acts relate, and that proviſion ſhould alſo be made for the final deciſion of queſtions reſpecting the rights of voting at ſuch elections, or of nominating or appointing the returning officer or returning officers who are to preſide thereat: Be it therefore enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That *no petition*, complaining of an *undue election or return*, or of *the omiſſion of a return*, or of *the inſufficiency of a return*, ſhall be proceeded upon, in the manner preſcribed in the ſaid above recited Acts, *unleſs the ſame ſhall be ſubſcribed by ſome perſon* or perſons *claiming* therein to have had *a right to vote* at the election to which the ſame ſhall relate, *or* to have had a right *to be returned* as duly elected thereat, *or alledging himſelf* or themſelves to have been *a candidate* or candidates at ſuch election: Provided always, That

That in any caſe where a writ has been iſſued for the election of a member to ſerve in Parliament for any diſtrict of burghs in that part of Great Britain called Scotland, any ſuch petition as aforeſaid ſhall and may be ſo proceeded upon, if the ſame ſhall be ſubſcribed by any perſon or perſons claiming therein to have had a right to vote at the election of any delegate or delegates, commiſſioner or commiſſioners, for chuſing a burgeſs for ſuch diſtrict.

II. And be it further enacted, That if, at any time before the day appointed for taking any ſuch petition into conſideration, the Speaker of the Houſe of Commons ſhall be informed, by a certificate in writing, ſubſcribed by two of the members of the ſaid Houſe, of the *death of the ſitting member* or ſitting members, or either of them, *whoſe election or return is complained of in ſuch petition, or* of the death of any member or members returned upon *a double return*, whoſe election or return is complained of in ſuch petition, *or that a writ* of ſummons *has been iſſued*, under the great ſeal of Great Britain, to *ſummon any ſuch member* or members to Parliament *as a peer* of Great Britain; *or* if the Houſe of Commons ſhall have reſolved *that the ſeat of any ſuch* member *is by law* become *vacant*; *or* if the ſaid Houſe ſhall be informed by a declaration *in writing, ſubſcribed by ſuch member* or members, or either of them, as the caſe ſhall be, and *delivered in* at the table of the Houſe, that it *is not the intention of ſuch member* or members to *defend his or* their *election or return*; in every ſuch caſe *notice* thereof *ſhall* immediately be ſent by the Speaker *to the ſheriff, or other returning officer* for

for the county, borough, or place to which such petition shall relate, and such sheriff or other returning officer *shall cause a true copy* of the same *to be affixed* on the doors of the *county hall* or town hall, or of the *parish church* neareſt to the place where such election has usually been held, *and such notice shall also be inserted*, by order of the Speaker, *in the* next *London Gazette*; and the order for taking such petition into consideration shall, if necessary, be adjourned, so that at the least thirty days may intervene between the day on which such notice shall be inserted in the said Gazette, and the day on which such petition shall be taken into consideration.

III. And be it enacted, That it shall and may be lawful, at any time within thirty days after the day on which such notice shall have been inserted in the said Gazette, for any person or persons claiming to have had a right to vote at such election, or at the election of delegates or commissioners for making such election, to petition the House, praying to be admitted as a party or parties, in the room of such member or members, or either of them; and such person or persons shall thereupon be so admitted as a party or parties, and shall be considered as such, to all intents and purposes whatever.

IV. And be it enacted, That whenever the member or members, whose election or return is so complained of in such petition, shall have given such notice as aforesaid of his or their intention not to defend the same, he or they shall not be admitted to appear or act as a party

party or parties againſt ſuch petition, in any ſubſequent proceedings thereupon, any thing in the above-recited Acts to the contrary notwithſtanding; and he or they ſhall alſo be reſtrained from ſitting in the Houſe, or voting in any queſtion, until ſuch petition ſhall have been decided upon in the manner preſcribed by the above recited Acts and by this Act.

V. And be it further enacted, That no proceeding ſhall be had upon any petition, by virtue of the above-recited Acts or of this Act, unleſs the perſon or perſons ſubſcribing the ſame, or ſome one or more of them, ſhall, within fourteen days after the ſame ſhall have been preſented to the Houſe, or within ſuch further time as ſhall be limited by the Houſe, perſonally enter into a recognizance to our Sovereign Lord the King, according to the form hereunto annexed, in the ſum of two hundred pounds, with two ſufficient ſureties, in the ſum of one hundred pounds each, to appear before the Houſe at ſuch time or times as ſhall be fixed by the Houſe for taking ſuch petition into conſideration, and alſo to appear before any Select Committee which ſhall be appointed by the Houſe for the trial of the ſame, and to renew the ſame in every ſubſequent ſeſſion of Parliament, until a ſelect committee ſhall have been appointed by the Houſe for the trial of the ſame, or until the ſame ſhall have been withdrawn by the permiſſion of the Houſe; and if, at the expiration of the ſaid fourteen days, ſuch recognizance ſhall not have been ſo entered into, or ſhall not have been received by the Speaker of the Houſe of Commons, the Speaker ſhall report the ſame to the Houſe, and

and the order for taking such petition into consideration shall thereupon be discharged, unless, upon matter specially stated, and verified to the satisfaction of the House, the House shall see cause to enlarge the time for entering into such recognizance; and whenever such time shall be so enlarged, the order for taking such petition into consideration shall, if necessary, be postponed, so that no such petition shall be so taken into consideration till after such recognizance shall have been entered into, and received by the Speaker: Provided always, that the time for entering into such recognizance shall not be enlarged more than once, nor for any number of days exceeding thirty.

VI. And be it enacted, That the said recognizances shall be entered into before the Speaker of the House of Commons, who is hereby authorized and empowered to take the same; and the sufficiency of the sureties named therein shall be judged of and allowed by the said Speaker, on the report of two persons appointed by him to examine the same, of which two persons the clerk, or clerk assistant of the House, shall always be one, and one of the following officers, not being a member of the said House, shall be the other; (that is to say) Masters of the High Court of Chancery, Clerks in the Court of King's Bench, Prothonotaries in the Court of Common Pleas, and Clerks in the Court of Exchequer; and the said persons so appointed are hereby authorised and required to examine the same, and to report their judgment thereupon; and are also hereby authorized to demand and receive such fees,

fees, for such examination and report, as shall be, from time to time, fixed by any resolution of the House of Commons.

VII. Provided always, and be it further enacted, That in any case where the party or parties, who are to enter into such recognizance, or his or their sureties, or either of them, shall reside at a greater distance from *London* than forty miles, it shall and may be lawful for such party or parties, surety or sureties, respectively, to enter into such recognizance before any of His Majesty's Justices of the Peace; and His Majesty's Justices of the Peace, or any of them, is and are hereby authorized and empowered to take the same; and such recognizance, being duly certified under the hand of such Justice, and being transmitted to the Speaker of the House of Commons, shall have the same force and effect as if the same had been entered into before the said Speaker: Provided also, that it shall and may be lawful for the persons to whom it is referred by the Speaker to examine the sufficiency of such surety or sureties, to receive as evidence, in their said examination, any affidavits relating thereto, which shall be sworn before any Master of the High Court of Chancery, or before any of His Majesty's Justices of the Peace; and such Master of the High Court of Chancery, or Justice of the Peace, respectively, is hereby authorized to administer such oath, and is authorized and required to certify such affidavit under his hand.

VIII. And be it enacted, That the House shall not permit any such petition to be with-

drawn, except ſo far as the ſame may relate to the election or return of any member or members who ſhall, ſince the ſame ſhall have been preſented, have vacated his or their ſeat by death, or in any other manner.

IX. And be it enacted, That if the petitioner or petitioners, who ſhall have entered into ſuch recognizance as aforeſaid, ſhall not appear before the Houſe by himſelf or themſelves, or by his or their counſel or agents, within one hour after the time fixed, in purſuance of the above recited Acts, and of this Act, for calling in the reſpective parties, their counſel or agents, for the purpoſe of proceeding to the appointment of a ſelect committee; or if the ſelect committee, appointed in purſuance of the ſaid Acts, and of this Act, for the trial of ſuch petition, ſhall inform the Houſe that ſuch perſon or perſons did not appear before the ſaid committee, by himſelf or themſelves, or by his or their counſel or agents, to proſecute their ſaid petition; or if ſuch perſon or perſons ſhall neglect to renew their ſaid petition within four ſitting days after the day of the commencement of every ſeſſion of the ſame Parliament, ſubſequent to that in which ſuch petition was firſt preſented, and until a ſelect committee ſhall have been appointed for trial of the ſame, or until the ſame ſhall have been withdrawn by the permiſſion of the Houſe, in every ſuch caſe ſuch perſon or perſons ſhall be held to have made default in his or their ſaid recognizance; and the Speaker of the Houſe of Commons ſhall thereupon certify ſuch recognizance into the Court of Exchequer, and ſhall alſo certify that ſuch perſon or perſons have

made default therein, and ſuch certificate ſhall be concluſive evidence of ſuch default, and the recognizance being ſo certified ſhall have the ſame effect as if the ſame were eſtreated from a court of law: Provided always, That ſuch recognizance and certificate ſhall in every ſuch caſe be delivered, by the Clerk or Clerk Aſſiſtant of the Houſe of Commons, into the hands of the Lord Chief Baron of the Exchequer, or of one of the Barons of the Exchequer, or of ſuch officer of the Court of Exchequer as ſhall be appointed by the ſaid Court to receive the ſame.

X. And whereas, by ſeveral proviſions contained in the above recited Acts made in the tenth and eleventh years of the reign of His preſent Majeſty, Sunday and Chriſtmas Day are excepted from the general regulations of the ſaid Acts; be it hereby enacted, That in every ſuch caſe, Good Friday ſhall alſo be excepted therefrom, in the ſame manner as if the ſame had been ſpecially excepted in the ſaid Acts.

XI. And be it alſo enacted, That if, on the day immediately preceding any of the three following days, that is to ſay, Chriſtmas Day, Whitſunday, or Good Friday, after reading the order of the day for taking any ſuch petition as aforeſaid into conſideration, it ſhall be found that there are not one hundred members preſent, or that the number of forty-nine members, not ſet aſide or excuſed, cannot be completed, it ſhall and may be lawful for the Houſe, if they ſhall think fit, any thing in the above recited Acts to the contrary notwithſtanding, to direct that the ſaid order ſhall be

adjourned for any number of days, and the Houſe ſhall then immediately be adjourned to the hour and day to which ſuch order ſhall be ſo adjourned.

XII. And whereas it is enacted, by the ſaid Act paſſed in the eleventh year of the reign of His preſent Majeſty, that on the day appointed for taking ſuch petition into conſideration, the Houſe ſhall not proceed to any other buſineſs whatſoever, except the ſwearing of members, previous to the reading of the order of the day for that purpoſe; be it hereby enacted, That it ſhall and may be lawful for the Houſe, previous to reading ſuch order, to receive any report from any ſelect committee appointed in purſuance of the above recited Acts, or of this Act, and to enter the ſame upon their journals, and to give the neceſſary orders and directions thereupon; and that previous to reading the ſaid order, the clerk of the crown may be admitted to alter or amend any return, in purſuance of an order made on a preceding day, or on that day; and alſo, that it ſhall and may be lawful for the Houſe, previous to reading the ſaid order, to poſtpone the ſame, for the purpoſe of attending His Majeſty, or His Majeſty's commiſſioners, in the Houſe of Lords, in conſequence of any meſſage from His Majeſty, or from His Majeſty's commiſſioners, ſignified to the Houſe in the uſual manner.

XIII. And be it alſo enacted, That if, within one hour after the time fixed in purſuance of the above recited Acts, and of this Act, for calling in the reſpective parties, their

counſel

counſel or agents, for the purpoſe of proceeding to the appointment of a ſelect committee, the petitioner or petitioners, or ſome one or more of them, who ſhall have ſigned any ſuch petition, ſhall not appear by himſelf or themſelves, or by his or their counſel or agents, the order for taking ſuch petition into conſideration ſhall thereupon be diſcharged, and ſuch petition ſhall not be any further proceeded upon in the manner directed in the above-recited Acts, and in this Act.

XIV. And be it enacted, That if, within one hour after the time ſo appointed as aforeſaid, the ſitting member or ſitting members, or other party or parties oppoſing the petition, ſhall not appear by himſelf or themſelves, or by his or their counſel or agents, or if, at the time ſo appointed as aforeſaid, there ſhall be no party before the Houſe oppoſing the petition, the Houſe ſhall proceed to appoint a ſelect committee, to try the merits of ſuch petition, in the following manner; (that is to ſay) That the names of forty-nine members ſhall be drawn, in the manner preſcribed in the above recited Acts, but in reducing the liſt of ſuch names to thirteen, *the place of a party oppoſing the petition ſhall be ſupplied by the clerk* appointed to attend the ſaid committee, who ſhall, as often as it ſhall come to his turn, as ſupplying the place of the party oppoſing the petition, to ſtrike out a name, ſtrike out that name which then ſhall be firſt in the ſaid liſt; and in every caſe where the party oppoſing the petition would be empowered, by the above recited Acts, to nominate one member to be added to the ſaid thirteen, the ſaid thirteen ſhall, from

among the perſons preſent in the Houſe at the time of drawing the names of the members, chuſe one perſon to ſupply the place of the member to have been ſo nominated, in the ſame manner as is directed by the above recited Act made in the eleventh year of His Majeſty's reign, in the caſe where there are more than two parties on diſtinct intereſts.

XV. And be it further enacted, *That the ſame method of reducing the liſt* of members drawn to thirteen, and of nominating a member to be added to the thirteen remaining on the ſaid liſt, ſhall be reſpectively followed, *whenever any party ſhall waive his right of ſtriking off* names from the ſaid liſt, or of nominating a member to be added to the ſaid thirteen.

XVI. And be it further enacted, That if any perſon ſummoned to attend the ſaid ſelect committee by the warrant of the Speaker of the ſaid Houſe, or by order of the ſaid committee, ſhall diſobey ſuch ſummons, or ſhall give falſe evidence, or prevaricate, or otherwiſe miſbehave in giving, or in refuſing to give, evidence before the ſaid committee, the ſaid committee ſhall have power, by a warrant to be ſigned by the chairman, and directed to the ſerjeant at arms attending the Houſe of Commons, or to his deputy or deputies, to commit ſuch perſon (not being a peer of the realm or a lord of Parliament) to the cuſtody of the ſaid ſerjeant, without bail or mainprize, for any time not exceeding twenty-four hours if the Houſe ſhall then be ſitting, or if not, then for a time not exceeding twenty-four hours

hours after the hour to which the Houſe ſhall then be adjourned.

XVII. And whereas it is enacted by the ſaid Act made in the tenth year of His Majeſty's reign, That if more than two members of the ſaid ſelect committee ſhall, on any account, be abſent therefrom, the ſaid ſelect committee ſhall adjourn in the manner in the ſaid Act directed, and ſo from time to time, until thirteen members are aſſembled; and that no ſuch determination as in the ſaid Act is mentioned ſhall be made, nor any queſtion be propoſed, unleſs thirteen members ſhall be preſent; and that no member ſhall have a vote on ſuch determination, or any other queſtion or reſolution, who has not attended during every ſitting of the ſaid ſelect committee; and that, in caſe the number of members able to attend the ſaid committee ſhall, by death or otherwiſe, be unavoidably reduced to leſs than thirteen, and ſhall ſo continue for the ſpace of three ſitting days, the ſaid committee ſhall be diſſolved, and another choſen to try and determine the matter of ſuch petition, in the manner in the ſaid Act before provided; be it hereby enacted, That whenever any committee ſhall have ſat for buſineſs fourteen days, not including thoſe days on which they ſhall have adjourned on account of the abſence of any member, nor including Sunday, Chriſtmas Day, or Good Friday, it ſhall and may be lawful for them to proceed to buſineſs, if a number of members not leſs than twelve be preſent; and in ſuch caſe, the committee ſhall not be diſſolved by reaſon of the abſence of the members, unleſs the number of members able to

attend the ſame ſhall, by death or otherwiſe, be unavoidably reduced to leſs than twelve, and ſhall ſo continue for the ſpace of three ſitting days; and whenever any committee ſhall in like manner have ſat for buſineſs twenty-five days, it ſhall and may be lawful for them to proceed to buſineſs, if a number of members not leſs than eleven be preſent; and in ſuch caſe, the committee ſhall not be diſſolved by reaſon of the abſence of the members, unleſs the number of members able to attend the ſame ſhall, by death or otherwiſe, be unavoidably reduced to leſs than eleven, and ſhall ſo continue for the ſpace of three ſitting days.

XVIII. And be it further enacted, That every ſuch committee, at the ſame time that they report to the Houſe their final determination on the merits of the petition which they were ſworn to try, ſhall alſo report to the Houſe whether ſuch petition did, or did not, appear to them to be frivolous or vexatious; and that they ſhall in like manner report, with reſpect to every party or parties who ſhall have appeared before them in oppoſition to ſuch petition, whether the oppoſition of ſuch party or parties reſpectively did, or did not, appear to them to be frivolous or vexatious; and that if no party ſhall have appeared before them in oppoſition to ſuch petition, they ſhall then report to the Houſe whether ſuch election or return, or ſuch alledged omiſſion of a return, or ſuch alledged inſufficiency of a return, as ſhall be complained of in ſuch petition, according as the caſe ſhall be, did or did not appear to them to be vexatious or corrupt.

XIX. And be it enacted, That whenever any ſuch committee ſhall report to the Houſe, with reſpect to any ſuch petition, that the ſame appeared to them to be frivolous or vexatious, the party or parties, if any, who ſhall have appeared before the committee in oppoſition to ſuch petition, ſhall be entitled to recover, from the perſon or perſons, or any of them, who ſhall have ſigned ſuch petition, the full coſts and expences which ſuch party or parties ſhall have incurred in oppoſing the ſame; ſuch coſts and expences to be aſcertained in the manner herein-after directed.

XX. And be it alſo enacted, That whenever any ſuch committee ſhall report to the Houſe, with reſpect to the oppoſition made to ſuch petition by any party or parties who ſhall have appeared before them, that ſuch oppoſition appeared to them to be frivolous or vexatious, the perſon or perſons who ſhall have ſigned ſuch petition ſhall be entitled to recover from ſuch party or parties, or any of them, with reſpect to whom ſuch report ſhall be made, the full coſts and expences which ſuch petitioner or petitioners ſhall reſpectively have incurred in proſecuting their ſaid petition; ſuch coſts and expences to be aſcertained in the manner herein-after directed.

XXI. And be it alſo enacted, That whenever, in any caſe where no party ſhall have appeared before ſuch committee in oppoſition to ſuch petition, ſuch committee ſhall report to the Houſe, with reſpect to the election or return, or to the alledged omiſſion of a return, or to the alledged inſufficiency of a return, complained

complained of in any ſuch petition, that the ſame appeared to them to be vexatious or corrupt, the perſon or perſons who ſhall have ſigned ſuch petition ſhall be entitled to recover from the ſitting member or ſitting members (if any) whoſe election or return ſhall be complained of in ſuch petition, ſuch ſitting member or ſitting members not having given notice as aforeſaid of his or their intention not to defend the ſame, or from any other perſon or perſons whom the Houſe ſhall have admitted or directed to be made a party or parties to oppoſe ſuch petition, the full coſts and expences which ſuch petitioner or petitioners ſhall have incurred in proſecuting their ſaid petition; ſuch coſts and expences to be aſcertained in the manner herein-after directed,

XXII. And be it enacted, That in the ſeveral caſes herein-before mentioned, the coſts and expences of proſecuting or oppoſing any ſuch petition ſhall be aſcertained in manner following; (that is to ſay), That on application made to the Speaker of the Houſe of Commons, by any ſuch petitioner or petitioners, or party or parties, as before mentioned, for aſcertaining ſuch coſts and expences, he ſhall direct the ſame to be taxed by two perſons, of whom the Clerk or Clerk Aſſiſtant of the Houſe ſhall always be one, and one of the following officers, not being a member of the Houſe, ſhall be the other; (that is to ſay), Maſters in the High Court of Chancery, Clerks in the Court of King's Bench, Prothonotaries in the Court of Common Pleas, and Clerks in the Court of Exchequer; and the perſons ſo authorized and directed to tax ſuch coſts and expences

expences ſhall, and they are hereby required to examine the ſame, and to report the amount thereof to the Speaker of the ſaid Houſe; who ſhall, on application made to him, deliver to the party or parties a certificate, ſigned by himſelf, expreſſing the amount of the coſts and expences allowed in ſuch report; and the perſons ſo appointed to tax ſuch coſts, and report the amount thereof, are hereby authorized to demand and receive, for ſuch taxation and report ſuch fees as ſhall be, from time to time, fixed by any reſolution of the Houſe.

XXIII. And be it enacted, That it ſhall and may be lawful for the party or parties entitled to ſuch coſts and expences, or for his, her or their executors or adminiſtrators, to demand the whole amount thereof, ſo certified as above from any one or more of the perſons reſpectively, who are herein-before made liable to the payment thereof, in the ſeveral caſes herein-before mentioned; and, in caſe of non-payment thereof, to recover the ſame by action of debt, in any of His Majeſty's courts of record at Weſtminſter; in which action it ſhall be ſufficient for the plaintiff or plaintiffs to declare that the defendant or defendants is or are indebted to him or them (in the ſum to which the coſts and expences, aſcertained in manner aforeſaid, ſhall amount) by virtue of this Act; and the certificate, of the Speaker of the Houſe of Commons, under his ſignature, of the amount of ſuch coſts and expences, together with an examined copy of the entries in the journals of the Houſe of Commons, of the reſolution or reſolutions of the ſaid ſelect committee or committees, ſhall be deemed full and ſufficient

ſufficient evidence in ſupport of ſuch action of debt: Provided always, That in every ſuch action of debt, no wager of law or more than one imparlance, ſhall be allowed; and the party or parties in whoſe favour judgment ſhall be given in any ſuch action, ſhall recover his or their coſts.

XXIV. And be it further enacted, That in every caſe where the amount of ſuch coſts and expences ſhall have been ſo recovered from any perſon or perſons, it ſhall and may be lawful for ſuch perſon or perſons to recover in like manner from the other perſons, or any of them, if ſuch there ſhall be, who ſhall be liable to the payment of the ſaid coſts and expences, a proportionable ſhare thereof, according to the number of perſons ſo liable.

XXV. And be it further enacted, That whenever any ſuch ſelect committee, appointed to try the merits of any ſuch petition as aforeſaid, ſhall be of opinion that the merits of ſuch petition do wholly or in part depend on any queſtion or queſtions which ſhall be before them reſpecting the *right of election* for the county, city, borough, diſtrict of burghs, or other place to which ſuch petition ſhall relate, or *reſpecting the right of chuſing, nominating*, or appointing the *returning officer or returning officers*, who is or are to make return of ſuch election, the ſaid committee, in ſuch caſe, ſhall require the counſel or agents for the ſeveral parties, or if there ſhall be none ſuch before them, ſhall then require the parties themſelves to deliver to the clerk of the ſaid committee, ſtatements in writing

writing of the right of election, or of chuſing, nominating, or appointing returning officers, for which they reſpectively contend; and the committee ſhall come to diſtinct reſolutions on ſuch ſtatements, and ſhall, at the ſame time that they report to the Houſe their final determination on the merits of ſuch petition, alſo report to the Houſe ſuch ſtatement or ſtatements, together with their judgment with reſpect thereto: And ſuch report ſhall thereupon be entered in the journals of the Houſe, and notice thereof ſhall be ſent by the Speaker to the ſheriff, or other returning officer of the place to which the ſame ſhall relate; and a true copy of ſuch notice ſhall, by ſuch ſheriff or other returning officer, be forthwith affixed to the doors of the county hall or town hall, or of the pariſh church neareſt to the place where ſuch election has uſually been held; and ſuch notice ſhall alſo be inſerted, by order of the Speaker, in the next London Gazette.

XXVI. And be it enacted, That it ſhall and may be lawful for any perſon or perſons, at any time within twelve calendar months after the day on which ſuch report ſhall have been made to the Houſe, or within fourteen days after the day of the commencement of the next ſeſſion of Parliament after that in which ſuch report ſhall have been made to the Houſe, to petition the Houſe to be admitted as a party or parties to oppoſe that right of election, or of chuſing, nominating, or appointing the returning officer or returning officers, who is or are to make return

return of ſuch election, which ſhall have been deemed valid in the judgment of ſuch committee.

XXVII. And be it enacted, That if no ſuch petition ſhall be ſo preſented within the time above limited for preſenting the time, the ſaid judgment of ſuch committee, on ſuch queſtion or queſtions, ſhall be held and taken to be final and concluſive in all ſubſequent elections of members of Parliament for that place to which the ſame ſhall relate, and to all intents and purpoſes whatſoever; any uſage to the contrary notwithſtanding.

XXVIII. And be it enacted, That whenever any ſuch petition ſhall be ſo preſented, a day and hour ſhall be appointed by the Houſe for taking the ſame into conſideration, ſo that the ſpace of *forty days* at the leaſt ſhall always intervene between the day of preſenting ſuch petition and the day appointed by the Houſe for taking the ſame into conſideration: and notice of ſuch day and hour ſhall be inſerted, by order of the Speaker, in the next London Gazette, and ſhall alſo be ſent by him to the ſheriff or other returning officer for the place to which ſuch petition ſhall relate; and a true copy of ſuch notice ſhall by the ſaid ſheriff or other returning officer, be forthwith affixed to the doors of the county hall, or town hall, or of the pariſh church neareſt to the place where ſuch election has uſually been held.

XXIX. And be it enacted, That it ſhall and may be lawful for any perſon or perſons, at any time before the day ſo appointed for taking ſuch petition into conſideration, to petition the Houſe to be admitted as a party or parties to defend ſuch right of election, or of chuſing, nominating, or appointing the returning officer or returning officers; and ſuch perſon or perſons ſhall thereupon be ſo admitted, and ſhall be conſidered as ſuch to all intents and purpoſes whatever.

XXX. And be it enacted, That at the hour appointed by the Houſe for taking ſuch petition into conſideration, the Houſe ſhall proceed to appoint a ſelect committee to try the merits thereof, according to the directions of the above-recited Acts, and of this Act; and ſuch ſelect committee ſhall be ſworn to try and determine the merits of ſuch petition, ſo far as the ſame relate to any queſtion or queſtions reſpecting the right of election for the place to which the petition ſhall relate, or reſpecting the right of appointing, nominating, or chuſing the returning officer or returning officers who are to make return of ſuch election; and the determination of ſuch committee on ſuch queſtion or queſtions, ſhall be entered on the journals of the Houſe, and ſhall be held and taken to be final and concluſive in all ſubſequent elections of members of Parliament for that place to which the ſame ſhall relate, and to all intents and purpoſes whatever; any uſage to the contrary notwithſtanding.

XXXI. And whereas it is amongſt other things enacted, by an Act paſſed in the ſecond year of the reign of his late Majeſty King George the Second, intituled, *An Act for the more effectual preventing bribery and corruption in the elections of members to ſerve in Parliament*, That ſuch votes ſhall be deemed to be legal which have been ſo declared by the laſt determination in the Houſe of Commons; which laſt determination concerning any county, ſhire, city, borough, cinque port, or place, ſhall be final to all intents and purpoſes whatever, any uſage to the contrary notwithſtanding; be it enacted, That ſo much of the ſaid Act as is above recited ſhall be, and the ſame is hereby repealed, in ſo far only as the ſame relates, or might be conſtrued to relate, to any ſuch determination to be made in the Houſe of Commons ſubſequent to the paſſing of this Act.

XXXII. And be it enacted, That all and every the rules, regulations, authorities, and powers, preſcribed or given by the above-recited Acts, or by this Act, to ſelect committees for the trial of controverted elections or returns, ſhall be in full force and effect with reſpect to ſelect committees appointed by virtue of this Act for the trial of ſuch queſtion or queſtions of right as aforeſaid, in as full and ample a manner as if the ſame were herein repeated, and particularly and ſpecially enacted, concerning ſuch ſelect committees: Provided always, That the ſeveral rules and regulations herein-before enacted, by which certain perſons are directed to enter into

into recognizances, and by which certain perſons are made liable to the payment of coſts, in the particular manner and in the ſeveral caſes herein before ſpecified, ſhall not be conſtrued to apply to the caſe of any petition preſented in purſuance of this Act, and relating ſolely to any queſtion or queſtions reſpecting the right of election, or of chuſing, nominating, or appointing a returning officer or returning officers.

XXXIII. And be it further enacted, That whenever it ſhall happen that Parliament ſhall be prorogued while any ſelect commitee ſhall be ſitting for the trial of any ſuch petition as aforeſaid, and before they ſhall have reported to the Houſe their determination thereon, ſuch committee ſhall not be diſſolved by ſuch prorogation; but ſhall be thereby adjourned to twelve of the clock on the day immediately following that on which Parliament ſhall meet again for the diſpatch of buſineſs (Sundays, Good-Friday, and Chriſtmas-Day, always excepted), and all former proceedings of the ſaid committee ſhall remain and continue to be of the ſame force and effect as if Parliament had not been ſo prorogued; and ſuch committee ſhall meet on the day and hour to which it ſhall be ſo adjourned, and ſhall thenceforward continue to ſit from day to day, in the manner provided in the above-recited Acts, and in this Act, until they ſhall have reported to the Houſe their determination on the merits of ſuch petition.

Form of the Recognizance *referred to in this Act.*

BE it remembered, That on the day in the year of our Lord before me A. B. [Speaker of the Houſe of Commons] *or* [one of his Majeſty's juſtices of the peace for the county of] came C. D. E. F. and J. G. and ſeverally acknowledged themſelves to owe to our Sovereign Lord the King the following ſums; that is to ſay, the ſaid C. D. the ſum of two hundred pounds, and the ſaid E. F. and the ſaid J. G. the ſum of one hundred pounds each, to be levied on their reſpective goods and chattels, lands and tenements, to the uſe of our ſaid Sovereign Lord the King, his heirs and ſucceſſors, in caſe the ſaid C. D. ſhall fail in performing the condition hereunto annexed.

The condition of this Recognizance is, that if the ſaid C D. ſhall duly appear before the Houſe of Commons, at ſuch time or times as ſhall be fixed by the ſaid Houſe for taking into conſideration the petition ſigned by the ſaid C D. complaining of an undue election or return for the of. [*Here ſpecify the county, city, borough, or diſtrict of burghs*], *or* complaining that no Return has been made for the ſaid [ ] of [ ] within the time limited by Act of Parliament, *or*, that the return made for the ſaid

ſaid [ ] of [ ] is not a return of a member or members according to the requiſition of the writ, and ſhall appear before any ſelect committee which ſhall be appointed by the Houſe of Commons for the trial of the ſame, and ſhall renew his ſaid petition in every ſubſequent ſeſſion of this preſent Parliament, until a ſelect committee ſhall have been appointed by the ſaid Houſe for the trial of the ſame, or until the ſame ſhall have been withdrawn by the permiſſion of the ſaid Houſe; then this recognizance to be void, otherwiſe to be of full force and effect.

A few Obſervations as to proceeding in the Committee.

Preliminary Objections.—

If a petitioner claiming to have been duly elected, be incapacitated from a ſeat by holding an office, or as having his former election avoided for bribery, the committee will not hear the petition.—It is a preliminary objection, to which the oppoſite party is let in. 21 Jour. 138, 9. Bedford Ca. cited 3 Lud. 164.

So any irregularity in the ſigning or preſenting of a renewed petition, has been examined into by committee previous to diſcuſſing the merits—though objected they had no juriſdiction. 3 Lud. 155.

Where the petitioner was out of the kingdom at the time of election—the committee proceeded, though the oppoſite party called for his qualification, which was not produced. Colcheſter Ca. cited 3 Lud. 166.

Who ſhall begin.—

1 Fra. Helleſton Ca. Oakhampton Ca.

The petitioner in common caſes, where one only petition.—Where more than one, thoſe intereſted in the return immediately annexed.—That is.

On double returns.—

Colcheſter Ca. 27 Feb. 1789.

The firſt mentioned on the return.—Sometimes however one only petitions. 3 Lud. 215.—But

On ſpecial returns.—

Vide Dougl. Introduction. 3 Lud. 315, 195. 1 Dougl. 120. 1 Fra. 158.

The party preſenting the firſt petition. And where the firſt objection is to the return, if ſuch objection prevails, he who prevails ſo far ſhall be conſidered as ſitting member, though no report made, and the other party ſhall begin upon the merits.

Of ſtating the right.—

1 Fra. 326. Dorcheſter Ca. and the caſes there cited.

Each party muſt give in the right he inſiſts upon.—And if there be any diſpute about it that muſt be firſt diſcuſſed.

1 Fra. 271.

And an agreement at the poll reſpecting the right, will not preclude a party from availing himſelf of a different right before the committee.

1 Fra. 71.

For ſufficient particularity in ſtating the right inſiſted upon. See the Oakhampton Caſe.

Of mode of proceeding.—

3 Lud. Downton Ca. 2 Steyning Ca. 1 Fra. 407. 2 Fra. 451. 3 Lud. 352. Cricklade Caſe.

Generally ſpeaking the petitioner ſhall go through his whole caſe before the other begins. And ſhall not be ſuffered to ſplit it, if the oppoſite party oppoſe it.—And ſhall not object where he gave no notice in the opening. But petitioner was ſuffered to mend his caſe on reply, where he had reſerved that right, without objection from the adverſe party.

The iſſue and ſubſtance.—

The petitioner muſt adhere to the allegations of the petition and cannot go out of them.

3 Dougl. 7. 10. Peterſfield Ca.

And ſtating the adverſe party *ſheriff*, by way of deſcription, was held inſufficient to let in proof he was ſheriff of the county, within which the borough lay, for which he was returned.

4 Dougl. 53-4. Cricklade Ca.

Though an allegation of "corrupt practices" generally was held ſufficient to let in particular acts of bribery—but there

there must be an express averment to that effect, implication will not do. 3 Lud. 460. Norwich Ca.

Where the petitioner stated particular grounds, and concluded that *by these means* the sitting member was returned—the committee would let in no other objection. 3 Lud. 408. Nairn Ca.

Upon a rejected vote the petitioner shall prove every thing essential to the vote—but on an admitted vote, it need be defended only upon the points of objection—But it must have been tendered at the poll, or cannot be set up in committee. 2 Fra. 213. Scott's vote. and vide 2 Lud. 350. Cricklade Ca. 2 Fra. 36.

The party succeeding on the question of *return*, if any be made is considered as sitting member. Therefore he may be let into objections not stated in his petition. 1 Dougl. 120. Milborn Port Ca. 3 Lud. 195. 1 Fra. 158. Oakhampton Ca.

Petition reported, &c.—

A petition was reported frivolous and vexatious, though abandoned, and though the petitioner had counsels' opinion to prefer a petition. 2 Fra. Bodmin Ca.

But where some material witnesses had died since preferring the petition—the committee would not report it, though there was no case, and the petition renewed since their deaths—but they examined particulars, though the adverse party admitted the fact. 2 Fra. case.

So where the evidence turned out inadmissible, Sutherland Ca.

Petition withdrawn in Plymouth Case. 2 Fra.

Four of eight petitioners after a renewed petition suffered to strike their names out, the sitting members consenting, 3 Lud. 144.

No. VI.

Rights of Voting, reſolved or agreed.

Abingdon.

A. D.
1708, 18th Jan. IN inhabitants paying ſcot and lot, and not receiving alms or any charity.

Agmondeſham.

1680 } 1 & 11 Dec.
1705 }

Thoſe inhabitants only who pay ſcot and lot.

St. Albans.

1700, 10th Mar. Is in the mayor, aldermen, and freemen, and ſuch houſeholders only as pay ſcot and lot.

1705, 24th Nov. In mayor, aldermen, and ſuch freemen only as have right, by birth or ſervice or by redemption, to trade or inhabit in the ſaid borough, and houſeholders paying ſcot and lot.

1714, 27th Apr. In the mayor, aldermen, and freemen, and ſuch houſeholders only who pay ſcot and lot.

Aldborough in Suffolk.

2709, 23d Dec. Is in the bailiffs, burgeſſes, and freemen, not receiving alms.

Dougl. Elect. 326. This continues to be the laſt determination.

1715, 16th June. Is in the bailiffs and burgeſſes reſident within the ſaid borough, and not receiving alms.

Aldborough in Yorkſhire.

1679, 15th May. In all the inhabitants paying ſcot and lot only.

	A. D.
Is not only in the ſelect number of burgeſſes holding by burgage-tenure in the ſaid borough, but in all the inhabitants paying ſcot and lot.	1690, 17th May.
	Andover.
	1689, 1ſt April.
Is in the bailiff and ſelect number of burgeſſes only.	1702, 28th Jan.
	Arundel.
Is only in the inhabitants of the ſaid borough paying ſcot and lot.	1693, 22d Feb.
	Ayliſbury.
In all the houſeholders of the ſaid borough not receiving alms.	1695, 28th Jan.
All perſons receiving alms purſuant to the will of Mr. Bedford, or any other charity annually diſtributed within the ſame town, are in reſpect thereof diſabled to vote.	1698, 7th Feb.
	Aſhburton.
In the freeholders, having lands or tenements holden of the ſaid borough only.	1707, 26th Feb.
The freeholders of the lands and tenements called Halſhanger and Holwell lands, lying within the borough of Aſhburton, and ſubject to pay a borough rent, have right to vote.	1710, 17th March.
	Banbury.
The mayor, aldermen, and capital burgeſſes only.	1691, 29th Dec.
	Bedford.
The burgeſſes, freemen, and inhabitants, being houſeholders, and not receiving alms.	1690, 12th April.

Bath.

A. D.

1706, 26th Jan. In the mayor, aldermen, and common council only.

Beaumaris.

1709, 18th Feb. In the mayor, bailiffs, and capital

1729, 3d March. burgeſſes of Beaumaris only.

Great Bedwin.

1729, 29th March. In the freeholders and inhabitants of ancient burgage meſſuages.

Berealſton.

1721, 6th June. In the freehold tenants of the ſaid borough, holding by burgage-tenure, and paying three pence per annum, or more, ancient burgage rent, to the lord of the ſaid borough; and in them only.

Berwick.

1695, 9th March. Is ſtated in the report to be in the freemen.

Bewdley.

1662, 28th April. In the bailiffs and burgeſſes appointed by the charter of 3 Jac. 1. excluſive of all others.

1679, 27th May. All the inhabitants of the borough of Bewdley have not a right to vote.

1710, 19th Dec. The charter of 1708 is void.

1769, 24th Jan. The five perſons elected burgeſſes had no right to vote.

Biſhop's Caſtle.

1699, 3d Feb. In the bailiff and all the burgeſſes within the ſaid borough.

Boſton.

1628, 8th March. In the commonalty, and not in the mayor, aldermen, and common council.

1171, 20th March. Only in the mayor, aldermen, and common council, and freemen

	A.D.
of the ſaid borough, reſident in it and paying ſcot and lot.	1719, 2d March.
Only in the mayor, aldermen, common council, and freemen reſident in the ſaid borough, paying ſcot and lot; ſuch freeman claiming their freedom by birth or ſervitude.	
Bletchingley.	
Is in the borough-holders only, without the bailiff.	1723, 22d March.
Brackley.	
Is in the mayor, aldermen, and burgeſſes of the ſaid borough.	1714, 20th April.
Bramber.	
Is in the perſons inhabiting ancient houſes, or in houſes built on ancient foundations, paying ſcot and lot.	1703, { 18th Jan. / 10th Mar.
	1715, 1ſt June.
Bridgewater.	
Is in the majority of the corporation conſiſting of a mayor, aldermen, and twenty-four capital burgeſſes, being inhabitants of that diviſion of the ſaid pariſh of Bridgewater, which is commonly called The Borough, paying ſcot and lot within the ſaid diviſion; and in them only.	1669, 7th Dec.
Bridport.	
The commonalty in general of the borough of Bridport ought to have voices in the election.	1628, 12th April.
Is in all the inhabitants not receiving alms.	1715, 5th May.
The words "commonalty in general," extend only to inhabitants houſeholders paying ſcot and lot.	1762, 2d March.

Briſtol.
Dougl. 260. It ſeemed to be taken for granted to be in the freeholders having freeholds of 40s. a year, and the three burgeſſes.

Buckingham.
1690, 11th Nov. Is in the bailiff and twelve burgeſſes only.

Bury St. Edmund's.
1714, 27th April. Is in the aldermen, twelve capital burgeſſes, and twenty-four burgeſſes of the common council of the ſaid borough.

Calne.
1710, 22d Dec. Is in the inhabitants of the borough, having a right of common, and being ſworn at Ogborn-court.

1723, 25th Feb. Is in the ancient burgeſſes of the ſaid borough only.

That the right of returning burgeſſes is in the guild ſtewards.

Cambridge.
1709, 9th & 24th February. Is in the mayor, bailiffs, and freemen not receiving alms.

1715, 27th March. It was the opinion of the committee, that the mayor, bailiffs, and burgeſſes of the town of Cambridge, might hold a ſummons common-day court, and admit freemen, without ſix aldermen of the ſaid town being then preſent.

This reſolution was not agreed to by the Houſe.

Cambridge County.
1724, 28th May. Reſolved, That all members of colleges, halls, or corporations, having no freeholds, ſaving in right thereof,

thereof; and parſons and vicars, having no other freeholds but glebe lands, are excluded from voting for members to ſerve in Parliament for the county of Cambridge.

Camelford.

Is in the freemen and inhabitants paying ſcot and lot. A. D. 1660, 3d Aug.

That Mr. Edward Cloake is legal mayor of the ſaid borough, and ought to make the return of a burgeſs to ſerve in this preſent Parliament for the ſaid borough. 1711, 8th May.

Cardigan.

Is in the burgeſſes at large of the boroughs of Cardigan, Acryſtwith, Lampeter, and Atpar, only. 1730, 7th May. (1 Dougl. 323.) (3 Dougl. 174.)

Carliſle.

No determination—but agreed to be in the mayor, aldermen, bailiffs, and freemen, reſident or not reſident, Alſo that the ſons of burgeſſes born after their fathers freedom, and perſons ſerving ſeven years within the city, have a right to be made free. 1711, 23d Feb. 1712-17 Journ. 106. vid 3 Lud.

Carmarthen.

Is in the burgeſſes of the ſaid borough. 1727, 7th March.

Cheping Wicombe.

Is in the mayor, bailiffs, and burgeſſes not receiving alms. 1702, 28th Jan.

Cheſter.

Is in the freemen. 1690, 2d Dec.

Is in the mayor, aldermen, and common council of the ſaid city; and in ſuch of the freemen, not receiving alms, as ſhall have been com- 1747, 9th Feb.

morant

morant within the ſaid city, or the liberties thereof, for the ſpace of one whole year next before the election.

Chippenham.

A. D.

1624, 9th April. The burgeſſes and freemen, more than twelve, have voices in the election.

1741, 28th Jan. That the words "burgeſſes and freemen," mean only ſuch burgeſſes and freemen as are inhabitants houſeholders of the ancient houſes called free or burgage houſes within the ſaid borough.

It paſſed in the negative.

Cirenceſter.

1624, 21ſt May. That where no cuſtom, nor charter for election, there the inhabitants houſeholders ought to make the election.

1690, 4th Nov. 1ſt. Inhabitants receiving a charitable donative called bye-money, have not a right.

2d. Inhabitants being inmates have not a right.

1709, 8th Dec. That the inhabitants of the Abbey, the Emery, and the Spiringatelane, have no right to vote.

1724, 21ſt May. Is in all the inhabitants houſeholders.

1792, 5th Mar. Counſel for petitioner gave in the right as being in the inhabitants, houſeholders legally ſettled, that inmates have no right, nor inhabitants of the Abbey, and Emery and Spiringate-lane. This was admitted

mitted on the other ſide to be the right. 2 Fra. 447.

Clithero.

A. D.

Is in ſuch freeholders only as have eſtates for life or in fee. 1661, 4th Feb.

Colcheſter.

Agreed to be in the ſworn burgeſſes not receiving alms. 1696, 28th March.

That the mayor cannot make foreigners free of the ſaid borough, without conſent of the majority of the aldermen and common council. 1710, 27th Jan.

Is in the mayor, aldermen, common council, and free burgeſſes not receiving alms. 1714, 6th May.

The right of making foreigners (not having a right of freedom by birth or ſervitude) freemen of the ſaid borough, is in the mayor and free burgeſſes of the borough, in common-hall aſſembled.

Corfe Caſtle.

Appeared to be in leſſors for years paying ſcot and lot, and alſo in ſuch perſons as had the freehold in reverſion upon ſuch leaſe for years. 1699, 6th April.

In ſuch perſons as have an eſtate of inheritance, or a leaſe for years, determinable upon life or lives, paying ſcot and lot. 1699, 1700, } 2d March.

In ſuch perſons as are ſeiſed in fee, in poſſeſſion or reverſion, of any meſſuage, tenement, or corporeal hereditament, in the borough; and in ſuch perſons as are tenants for life or lives; and for want of ſuch freehold, in tenants for years deter- 1718, 21ſt Jan.

minable

minable upon any life or lives, paying ſcot and lot; and in them, and in no others.

Coventry.

A. D.

1701, 24th Feb. The freemen of Coventry receiving alms or charity, have no right to vote.

1708, 1ſt March. Is in ſuch perſons who have ſerved apprenticeſhips for ſeven years within the city, to one and the ſame trade, not receiving alms or conſtant charities.

Perſons receiving Sir Thomas White's gift are thereby diſabled from giving their votes.

It paſſed in the negative.

1708, 3d March. Perſons receiving Mr. Wheatley's gift not diſabled.

1711, 13th March. The members of the fullers company have right to vote, being freemen, and not receiving alms or weekly charity; and all ſuch freemen as do not receive alms, and have ſerved ſeven years apprenticeſhip in the city or ſuburbs, who do not receive alms or weekly charity.

1722, 20th Nov. In ſuch freemen as have ſerved ſeven years apprenticeſhip to one and the ſame trade, in the ſaid city or the ſuburbs thereof, and do not receive alms or weekly charity; ſuch freemen being duly ſworn and enrolled.

Cricklade.

1634, 1ſt April. Is in the freeholders and copyholders of the borough-houſes, and leaſeholders

leaſeholders for any not under three years only.

A. D.

Agreed by the counſel on both ſides to be in the freeholders, copyholders, and leaſeholders for three years. 1685, 10th June.

Agreed by counſel on both ſides that the right of election was in the freeholders and copyholders of borough-houſes, and leaſeholders for any term not under three years. 1689, 1ſt April.

Is in the inhabitants poſſeſſing houſes within the ſaid borough, who are freeholders, copyholders, or leaſe-holders for any term not leſs than three years, or for any ſuch term, or greater term, determinable on life or lives; ſuch freeholder, *copyholder, or leaſeholder, having been in the occupation of the houſe for which he may claim to vote forty days preceding any election.* 1776, 8th Feb. (1 Dougl. 66.)

That the houſes which were in the occupation of Thomas Bound, Thomas Kilmaſter ſenior, Richard Liddel, William Mabſon, John Pounds and Robert Strange, at the laſt election, are within the boundary of the ſaid borough. (4 Dougl. 13. 66.) 2 Lud. 324.

And by a reſolution of the committee in 1785, Such freeholder copyholder or leaſeholder having been "*as freeholder copyholder or leaſeholder*" in the occupation of the houſe for which he may claim to vote forty days preceding any election and in the freeholders of (2 Lud. 356.)

the

A. D.	
Chicheſter City,	holders of the ſeveral hundreds, as directed by the ſtat. 22 G. 3. c. 31.
	The commonalty and free citizens.
Dartmouth, alias *Clifton-Dartmouth-Hardneſs.*	
1689, 28th Nov.	Reported that it appeared to be in the freemen of the ſaid borough.
Denbigh.	
1743, 7th Feb.	Is in the burgeſſes, inhabitants of the boroughs of Denbigh, Ruthyn, and Holt, reſpectively.
Derby.	
1776, 1ſt Feb.	Agreed by counſel on both ſides, that every member of the corporation had a right to vote.
(3 Dougl. 290.)	There is no determination of the right.
Devizes.	
1688, 21ſt March.	Is in the mayor and ſelect number of burgeſſes only.
Dorcheſter.	
1720, 17th May.	That part of the pariſh called the Holy Trinity, alias Dorcheſter Trinitatis, which was formerly the pariſh of Froome Whitfield, is no part of the borough of Dorcheſter.
	That the tithing of Collingtonrow, within the pariſh of the Holy Trinity, alias Dorcheſter Trinitatis, is not part of the borough of Dorcheſter.
1720, 18th March.	Is in the inhabitants of the ſaid borough paying to church and poor in reſpect of their perſonal eſtates, and in ſuch perſons as pay to church and

and poor in respect of their real estates within the said borough.

A. D.

The opinion of the committee, that, pursuant to the last determination, such persons as pay to church and poor in respect of their real estates within the said borough, though not inhabitants or occupiers, were entitled to vote. 1775, 22d Feb.

And, by further construction of the above last determination on 14th May 1791, "although their names do not appear upon the poor rate."

Dover.

Is in the freemen and free burgesses, inhabitants of Dover. 1623, 24th March.

That the *non*-inhabitant freemen, as well as the inhabitant freemen, and free burgesses of the town and port of Dover, have a voice in the election. 1770, 12th March.

Downton.

Was considered by the counsel on both sides, in their arguments, to be in persons having a freehold interest in burgage tenements, holden, by a certain rent, fealty, and suit of court, of the Bishop of Winchester, who is lord of the borough, and paying reliefs on descent, and fines on alienation. 1775, 4th Feb.

There is no determination of the right of election. (1 Dougl. El. 235.)

Droitwich.

Is in the burgesses of the corporation of the salt-springs of Droitwich. 1690, 11th Nov.

Dumbarton.

A. D.
1724, 23d Jan. That any conveyance of undivided ſhares of the ſuperiority of any lands in the ſhire of Dumbarton, in order to multiply votes or ſplit an intereſt in ſuch ſuperiority amongſt ſeveral perſons, with a view to enable them to vote, is contrary to the Act of Parliament made in Scotland in 1681, intituled, *An Act concerning the election of commiſſioners for ſhires.*

That no perſon claiming a right by purchaſe to an undivided part of the ſuperiority of any lands, where the extent of the lands of which he claims the ſuperiority is not particularly ſpecified, and the land diſtinguiſhed by the charter by which he claims a vote, has any right to vote in the election of a commiſſioner to ſerve in Parliament for the ſhire of Dumbarton.

Dunwich.

1691, 8th and 22d December. Is not in the freemen of the ſaid borough, commonly called out-ſitters, as well as in the freemen inhabiting within the ſaid borough.

Is only in the freemen inhabiting within the ſaid borough.

1695, 25th Nov. Is in the freemen of the ſaid borough, commonly called out-ſitters, as well as in the freemen inhabiting within the ſaid borough.

1708, 5th Feb. Is only in the freemen inhabiting within the ſaid borough, not receiving alms.

That

Durham.

That the two hundred and fifteen persons made, or pretended to be made, free of the city of Durham since the death of Henry Lambton, Esq; late member of Parliament for the said city, had not a right to vote in the late election. A. D. 1762, 11th May.

East-Grinstead.

Is an ancient borough by prescription; that the inhabitants, as well as the burgage holders of the said borough, have a right to vote in elections. 1679, 7th April.

Is not in the burgage-holders and inhabitants of the said borough. 1695, 9th Feb.

Is in the burgage-holders only.

East-Retford.

Is as well in the burgesses non-resident as in the burgesses resident within the said borough.—Agreed to by the House. 1701, 15th April.

The younger sons of freemen of the borough of East-Retford, have not a right to demand their freedom of the said borough. 1701, 17th March.

Persons not inhabiting in the said borough, are incapable of being made free of the same by redemption. 1702, 28th Nov.

All the sons of freemen have a right to the freedom of the said borough.

Is in such freemen only as have a right to their freedom by birth, as eldest sons of freemen, or by serving seven years apprenticeship, or have it by redemption, whether 1705, 17th Jan.

A. D.

inhabiting or not inhabiting in the ſaid borough at the time of their being made free.

1710, 11th Jan. Is in ſuch freemen only as have a right to their freedom, by birth, as eldeſt ſons of freemen, or by ſerving ſeven years apprenticeſhip, or have it by redemption, inhabiting in the ſaid borough at the time of their being made free.

Eveſham.

1669, 22d Sept. Is in the common burgeſſes.

Exeter. The freemen.

Flint.

1728, 21ſt May. Is in the inhabitants of the borough of *Flint*, *Rhydland*, *Overton*, *Caeways*, *Caegurley*, paying ſcot and lot.

The inhabitahts of *Knolton* and *Overton*, foreign, paying ſcot and lot in the pariſh of *Overton*, have a right to vote for the town of Flint.

Fowey.

1701, 5th May. Is in the prince's tenants, who are capable of being portreeves of the ſaid borough, and in ſuch inhabitants of the ſaid borough only as pay ſcot and lot.

1770, 5th May. The prince's tenants capable of being portreeves of the borough of Fowey, are ſuch tenants only as have been duly admitted upon the court roll of the manor, and have done their fealty.

It does not appear that the Houſe agreed to either of the above reſolutions.

Is

Gatton.

A. D.

Is in the Inhabitants and the return made by them being adjudged good, was (by the then petitioner) inſiſted to be in the inhabitants not receiving alms, and in the freeholders having ſuch freehold in their own occupation. 1628, 26th March.

Was (by the then ſitting member) inſiſted to be in the freeholders and inhabitants paying ſcot and lot; and he was adjudged duly elected. 1696, 15th Dec.

Grantham.

Is in the freemen of the ſaid borough, not receiving alms or charity. 1710, 11th Jan.

Guilford.

Is only in the freemen and freeholders paying ſcot and lot, reſident in the town. 1699, 24th April.

Harwich.

Is in the mayor, aldermen, and capital burgeſſes, or headborough, of the ſaid borough, reſident within the ſaid borough. 1714, 6th April.

Haſlemere.

The inhabitant freeholders in the borough have only votes in elections. 1661, 20th May.

Was agreed to be in the freeholders reſident within the borough. 1698, 9th Feb.

In the determination of 1661, by the word "*freeholders*" is meant only freeholders of meſſuages, lands or tenements, lying within the borough and manor of *Haſlemere*, whether the ſame *pay* rent to the lord of the ſaid borough and manor or not, excluſive of any lands or tenements 1755, 24th April.

which are or have been parcel of the waſte ground of the ſaid borough and manor, or any meſſuages or buildings which are or ſhall be ſtanding or being thereon.

Haſtings,
A. D.
1698, 30th Jan. Is in the mayor, jurats, and freement, reſident, and not receiving alms, only.

Haverford-Weſt.
1715, 4th July. The proceeding of the mayor and common council of the town of Haverford Weſt, in making burgeſſes without the conſent of the commonalty, was illegal, and contrary to the rights of the ſaid town; and that the burgeſſes ſo pretended to be made, have not thereby acquired any right of voting in any future elections.

Hedon.
1746, 3d April, Is in the burgeſſes of the ſaid borough,

Helleſton.
166 , 10th Dec. Is not in the mayor and inhabitants at large.
1775, 11th March. Admitted, that the right of election has conſtantly been in the mayor and commonalty; which has always been underſtood to mean the mayor, aldermen, and freemen only.
No determination of the right.

Hertford.
1701, 27th Jan. Is not in ſuch perſons only as are inhabitants houſeholders, not receiving alms, and in ſuch freemen who, at the time of their freedom granted

granted to them, were inhabitants of the ſaid borough or of the pariſhes thereof.

Is in all the freemen, and alſo in all the inhabitants, being houſeholders, and not receiving alms. A. D.

Is in the inhabitants not receiving alms, and in ſuch freemen only as, at the time of their being made free, were inhabitants of the ſaid borough or the pariſhes thereof; the number of the freemen living out of the borough, not exceeding three perſons. 1705, 5th Dec.

Higham-Ferrers.

Is in the mayor, aldermen, burgeſſes, and freemen, being houſeholders, and not receiving alms. 1702, 28th Jan.

Hindon.

Is in the bailiff, burgeſſes, and ſuch inhabitants only as pay ſcot and lot. 1701, 3d April.

Is in the inhabitants of the ſaid borough not receiving alms. 1701, 13th May.

Agreed to by the Houſe.

Is in the inhabitants of houſes within the ſaid borough, being houſekeepers and pariſhioners, not receiving alms. 1728, 12th April.

Honiton.

Is in the inhabitants of the ſaid borough paying ſcot and lot only. 1710, 3d Feb.

Is in the inhabitants, houſekeepers, within the ſaid borough, commonly called pot-wallers, not receiving alms of the pariſh. 1724, 18th Dec.

Horſham.

A. D
1715, 10th June. Is in all ſuch perſons as have an eſtate of inheritance, or for life, in burgage-houſes or burgage-lands lying within the ſaid borough.

And by an explanatory reſolution of the committee, Feb. 1792. no evidence ſhall be admitted to ſhew that ſuch perſons ſhould be preſented to or admitted at the Lord's Court, in order to be qualified to vote for members of Parliament.

(1 Fra. 33.)

Nor evidence admitted to prove any freehold property, gave a vote that was not burgage.

(Ibid. 39.)

Nor of any uſage within the borough for ſplitting and dividing ancient burgages.

(Ibid. 51.)

Hyeth.

1710, 27th Jan. Is in the mayor, jurats, common council, and freemen.

Agreed to by the Houſe.

Ipſwich.

1710, 3d Feb. Is in the bailiffs, portmen, and common councilmen, and freemen at large, not receiving alms.

1714, 31ſt March. Portmen are an eſſential conſtituent part of the great court for making freemen of the ſaid borough; without ſome of which portmen being preſent, the ſaid court cannot be held.

1714, 1ſt April. A motion being made, and the queſtion being put, that the perſons voted freemen at the pretended great courts held in the corporation of Ipſwich the 15th June, the 7th Auguſt,

Auguſt, the 25th September and 28th September 1711, without any legal portmen then preſent, were duly made and have a right to vote for members to ſerve in Parliament for the borough of Ipſwich; it paſſed in the negative.

St. Ives.

Is in the inhabitants of the ſaid borough paying ſcot and lot. A. D. 1702, 8th Dec.

Knareſborough.

Was in the burgage-holders. 1690, 1691, } 17th May.

Launceſton.

Is in the mayor, aldermen, and freemen, being inhabitants at the time they were made free, and not receiving pay of the pariſh. 1723, 17th March.

The aldermen of the borough of *Dunheved*, alias *Launceſton*, in the county of Cornwall, ought to be elected out of the legal freemen of the ſaid borough only. 1734, 24th March.

Leiceſter.

Such freemen as were made free at the charge of any of the candidates, had not a right to vote at the laſt election of burgeſſes to ſerve in Parliament for the borough of Leiceſter. 1705, 8th Feb.

Perſons living in the borough of Leiceſter, by certificate, not having gained a ſettlement by renting ten pounds a year, or ſerving in an annual office, are not entitled, by paying ſcot and lot, to vote.

In

Leominſter.

A. D.

1725, 16th April. In the bailiffs, capital burgeſſes, and inhabitants, paying ſcot and lot.

Leſtwithiel.

1709, 20th Dec. Is in the mayor and ſix capital burgeſſes, together with the ſeventeen aſſiſtants annually choſen, and who had a right to vote at the preceding election of a mayor.

Lewes.

1735, 8th May. Is in the inhabitants, being houſeholders, paying ſcot and lot.

Agreed to by the Houſe *nem. con.*

Lime-Regis.

1689, 21ſt May. Is in the mayor, burgeſſes, and freeholders.

1727, 28th Feb. Alledged, that it was in the mayor, capital burgeſſes, and freemen.

That the right, &c. is in the freemen only as well non-reſident as reſident.

(2 Lud. 94.)

Litchfield.

1701, 10th March. The bailiff, magiſtrates, freeholders of forty ſhillings a-year, and all that hold by burgage-tenure, have a right to vote.

Such freemen only of the ſaid city as are enrolled, and pay ſcot and lot, have a right to vote.

Such freemen of the taylors company as are enrolled in the old book of the conſtitutions of the taylors company in the ſaid city, have not a right to vote.

Such freemen only of the taylors company as are enrolled in the new book of the conſtitutions of the taylors

lors company in the city of Litchfield, have a right to vote.

To theſe reſolutions the Houſe agreed.

A. D.

Is in the bailiffs, magiſtrates, freeholders of forty ſhillings *per annum*, all that hold by burgage-tenure, and in ſuch freemen only of the ſaid city as are enrolled, paying ſcot and lot there. 1718, 10th Dec.

Liverpool.

Was agreed by the counſel on both ſides to be in the mayor, bailiffs, and freemen of the ſaid borough, not receiving alms. 1729, 5th March.

Ludgerſhall.

Is in ſuch perſons who have an eſtate of inheritance, or freehold, or leaſehold determinable upon life, within the ſaid borough. 1689, 11th Feb.

Is in the freeholders or leaſeholders of the ſaid borough, determinable upon life or lives. 1705, 17th Jan.

Ludlow.

Is in all the reſiant common burgeſſes, as well as the twelve and twenty-five. 1661, 26th Feb.

The new charter granted to the town of Ludlow by the late king James, whereby the ancient method of electing burgeſſes for Parliament is altered, is illegal, and void. 1690, 22d Dec.

The ſons of burgeſſes of Ludlow, and thoſe that marry the daughters of burgeſſes, have a right to be made burgeſſes of the ſaid borough. 1698, 1ſt March.

Every

Every perſon having a right to be made a burgeſs of the borough of Ludlow, ought to demand ſuch his right by petition, ſigned by the petitioner, according to the bye-law made in the year 1663, and not otherwiſe.

Lymington.

A. D.

1691, 29th Dec. The corporation of Lymington is a corporation by preſcription.

The mayor and burgeſſes only have a right to elect.

1695, 18th Feb. Is not in the mayor, burgeſſes; and commonalty of the ſaid borough paying ſcot and lot, but only in the mayor and burgeſſes, excluſive of the commonalty paying ſcot and lot.

1710, 11th Jan. Is not in the mayor, burgeſſes, and inhabitants of the ſaid borough not receiving alms, but in the mayor and burgeſſes of the ſaid borough only.

Maidſtone.

1701, 7th Feb. Is in the freemen not receiving
1702, 8th Dec. alms or charity.

Malden.

1715, 20th May. It is the opinion of the committee, that the right of election is in ſuch freemen as do not receive alms, and are entitled to freedom by birth, marriage, or ſervitude.

Such perſons who derive their right to freedom from honorary freemen of the ſaid borough, have not a right to vote.

Perſons

Perſons claiming their freedom by purchaſe, and exerciſing trades within the borough, have not a right to vote.---Note, agreed to by the Houſe.

Malmeſbury.

Agreed, to be in the aldermen and twelve capital burgeſſes. A. D. 1702, 13th Dec.

Marlborough.

Is in the mayor and burgeſſes of the ſaid borough only. 1717, 13th May.

Marlow, Great.

Thoſe inhabitants only who pay ſcot and lot. 1699, 21ſt Nov.

Milborne Port.

Is only in the capital bailiffs and their deputies, in the commonalty ſtewards, and inhabitants thereof paying ſcot and lot. 1702, 8th Dec.

Michel, Saint.

Is in the lords of the borough who are liable to be choſen port-reeves thereof, and in the houſeholders of the ſame not receiving alms. 1689, 12th Dec.

The ſame reſolution agreed to by both parties. 1690, 12th Dec.

Is in the port-reeves, and lords of the manor who are capable of being port-reeves, and the inhabitants of the ſaid borough paying ſcot and lot. 1700, 20th March.

Minehead.

Is in the pariſhioners of Minehead and Dunſter, being houſekeepers in the borough of Minehead, and not receiving alms. 1717, 24th Feb.

Doth

Monmouth.
A. D.
1680, 26th Nov. Doth not belong to the burgeſſes inhabitants of the borough of Monmouth only.

The burgeſſes inhabitants of the boroughs of Newport and Uſke in the county of Monmouth, have a right to vote in the election of a burgeſs to ſerve in Parliament for the ſaid borough of Monmouth.

Montgomery.
1728, 16th April. Is in the burgeſſes of the ſaid ſhire town only.

Morpeth.
1694, 9th March. Is only in the bailiffs and free burgeſſes of the ſaid borough.

Newark.
1676, 21ſt March. By virtue of a charter granted to the town of Newark upon Trent in the county of Nottingham, the town of Newark hath a right to ſend burgeſſes to Parliament.

1699, 1700, } 11th Jan. The mayor, aldermen, and all the inhabitants within the borough of Newark upon Trent, who pay, *or ought to pay*, ſcot and lot within the ſaid borough, have a right to vote at the election of members to ſerve in Parliament for the ſaid borough.

1 Fra. 265. But 22d March 1791, Reſolved "Is in the mayor, aldermen, and all the inhabitants paying ſcot and lot within the ſaid borough."

Newcaſtle.
1624, 9th April. Was (before the charter) in the mayor, bailiffs, and common council; and it was reſolved, That the late conſtitution altered not the former cuſtom.

The

The right was agreed to be in the mayor, burgeſſes, and freemen reſident within the borough.

A.D. 1705, 27th Feb.

Newtowne.

Is in the mayor and burgeſſes of the ſaid borough, having borough lands within the ſaid borough.

1729, 22d April.

Northampton.

The inhabitants, being houſeholders and not receiving alms, are the proper electors for that town; and that the ſharing in the charitable gift appointed to be diſtributed at Chriſtmas, is a taking of alms.

1665, 25th April.

Norwich.

Is in the freeholders, and ſuch freemen only of the ſaid city as are entered in the books, and do not receive alms or charity.

1701, 12th March.

Nottingham.

Agreed, That the right was in the mayor, freemen, and freeholders of forty ſhillings a year; and that the eldeſt ſon of freemen by their birth, the youngeſt ſons of freemen who had ſerved ſeven years apprenticeſhip whether at Nottingham or elſewhere, and alſo ſuch perſons as ſerved apprenticeſhips to any freemen of Nottingham, were well entitled to demand their freedom.

1701, 10th June.

Oakhampton.

Is in the freeholders and freemen, being made free according to the charter and bye laws of the ſaid borough.

1710, 24th Feb.

That

(1 Fra. 178.) Oakhampton caſe.

That the portreeve of the borough is not the returning officer, but that the mayor is.

Orford.

A. D.
1699, 10th Feb.

Is in the mayor, portmen, capital burgeſſes, and freemen, of the ſaid borough.

1708, 29th Jan.

Is in the mayor, portmen, capital burgeſſes, and freemen, not receiving alms.

Oxford.

1621, 19th Feb.

Stated, That the right was in the mayor, fifteen more called the magiſtrates, and common council, making in all forty-eight.

Peebles.

1733, 11th May.

That the right of election of a præſes and clerk, is in ſuch perſons as ſtand upon the roll laſt made up by the freeholders at the Michaelmas head-court, or at the laſt election of a member to ſerve in Parliament.

Agreed to by the Houſe.

Pembroke.

1711. } 23d Feb.
1712. }

That the mayor and burgeſſes of the ancient borough of Wiſton, in the county of Pembroke, have a right to vote in the election for the borough of Pembroke.

Peterborough.

1701, 16th June.

Agreed, That the right was in the inhabitants paying ſcot and lot.

1728, 9th April.

The execution of the precept for electing citizens to ſerve in Parliament, and the making the return thereof, are in the bailiff of the ſaid city, appointed by the dean and chapter

chapter of the cathedral church of Peterborough.

A. D.

The right of electing citizens to serve in Parliament for the city of Peterborough, is in the inhabitants within the precincts of the Minster there, being housholders not receiving alms; and in other the inhabitants within the said city, paying scot and lot. 1728, 13th May.

Petersfield.

Is in the freeholders of lands, or ancient dwelling houses, or shambles, built upon ancient foundations within the said borough. 1727, 9th May.

Agreed to by the House.

Plymouth.

Is in the mayor and commonalty. And "commonalty" was afterwards resolved (on 15th and 17th of Jan. 1739) to extend to freemen only of the said borough. 1670, 9th June.

Plympton.

The charter granted by the late king James to the borough of Plympton, is illegal, and destructive to the constitution of the government. 1690, 14th April.

Is in the mayor, bailiffs, and freemen of the said borough; and in the sons of freemen, who have a right to demand their freedom, and have been refused the same. 1702, 28th Jan.

Poole.

The opinion of the committee, That the right of election is in the mayor, burgesses, and commonalty of the said town and county, who pay scot and lot. 1688, 9th Feb.

A. D.

1661, 15th June. It paſſed in the negative.

The out-burgeſſes have equal voices in the election with the in-burgeſſes.

Pontefract.

1624, 28th May. There being no charter nor preſcription for choice, the election is to be made by the Inhabitants (houſeholders) reſiants there.

1699, 1700, } 17th Jan. Agreed, That the right of election is in ſuch perſons as have an inheritance, or freehold of burgage-tenure, within the ſaid borough.

1715, 22d March. Agreed, That Pontefract was a borough by preſcription, and that the right of election is in perſons having a freehold of burgage-tenure, paying a burgage-rent.

1770, 6th Feb. Is in perſons having within the ſaid borough a freehold of burgage-tenure, paying a burgage rent.

1791, 9th March. "Is in the inhabitants houſholders reſiants."

Portſmouth.

1695, 24th Jan. Is in the mayor, aldermen, and burgeſſes of the ſaid borough only.

1710, 3d Feb. Joſeph Whithorn, Eſq; who was elected mayor of the ſaid borough on the 10th Dec. 1709, and had not duly qualified himſelf for that office according to law, by taking the ſacrament of the Lord's ſupper, according to the rights of the church of England, within one year next before his election, was not legal mayor of the ſaid borough.

The aldermen elected during the ſaid pretended mayoralty of the ſaid Mr. Whithorn, are not legal aldermen; and the burgeſſes elected duing his pretended mayoralty, have not a right to vote in elections of members to ſerve in Parliament for the ſaid borough.

Preſton.

All the inhabitants have voices in the election. A. D. 1661, 18th Dec.

Not to admit counſel to produce evidence, in order to ſhew that the right of election for the ſaid borough was in all the inhabitants, according to the laſt determination of the Houſe; or that the words, "all the inhabitants," mentioned in the ſaid determination of the Houſe, mean only "ſuch in-burgeſſes of the laſt guild, or thoſe admitted ſince by copy of court-roll, as are inhabitants of the place," but all the inhabitants at large. 1768, 29th Nov.

By reſolution 1781. "*inhabitants*" does not mean *in-burgeſſes reſident.*"

April 1785. Evidence refuſed to prove that conſtruction had taken place.

Queenborough.

The right of admitting burgeſſes of the ſaid borough is in the mayor, jurats, and bailiffs of the ſaid borough only. 1729 17th, April.

Radnor New.

Is in the burgeſſes of Radnor, Ryader, Knighton, Knucklas, and Kevenliel, only. 1690, 12th Nov. Vid. 1 Dougl. 17.

A. D.

1769, 7th March. The ſeveral perſons, though they had no other claim to be burgeſſes of the borough of Ryader and Knucklas, than by virtue only of a preſentment made in a pretended court leet, holden under the authority of certain letters patent, which appear not to have been inrolled within the time expreſsly required by the ſaid letters patent in order to the validity thereof; ought not to have been admitted as legal voters at the laſt election.

Reading.

1708, 2d Dec. Is in the freemen and inhabitants; ſuch freemen not receiving alms, and ſuch inhabitants paying ſcot and lot.

1708, 4th Dec. Such perſons as have within two years laſt received Kendrick's charity, or any other annual charity diſtributed in the ſaid borough, have not a right to vote.

1716, 13th May. Is in the inhabitants only, paying ſcot and lot.

Richmond.

1727, 9th March. Is in ſuch perſons only as are owners of ancient burgages in the ſaid borough, having a right of paſture in a common field called Whitecliffe Paſture.

Rye.

1702, 9th Dec. Is only in the mayor, jurats, and in the freemen inhabiting in the port of Rye, and paying ſcot and lot.

1710, 17th Feb. Thomas Hills, W. W. T. B. and J. Y. having been propoſed to be made

made free, and rejected, at a court of aſſembly; and afterwards made free in the ſame mayoralty; are not legal freemen of the port of Rye.

It is not neceſſary the freemen of the port of Rye ſhould qualify themſelves according to the Corporation Act, before they be allowed to vote in the aſſembly court of the ſaid port.

Saltaſh.

There is no reſolution of the right—in 1780. Petition inſiſted the right was in freeholders, but was negatived by the deciſion in favour of ſitting members returned by the corporation.

A. D:

Right was inſiſted by petitioners to be in freeholders and free burgeſſes, holding by burgage tenure, but ſitting members returned by corporation prevailed. 1783.

Petitioners inſiſted right was in freeholders of antient houſes, or their ſcites within the borough, held by burgage tenure, but ſitting members returned as above prevailed. 1785, 24th April.

Petitioner on right of burgage tenants prevailed againſt ſitting member returned by the corporation, on newly diſcovered evidence. 1787, 7th Feb.

(2 Lud. 108. & ſeq.)

Sandwich.

The freemen of the port of Sandwich inhabiting within the ſaid port, although they receive alms, have a 1690, 31ſt Oct.

right to vote.---Not agreed to by the Houſe.

Sarum, Old.

A. D.
1688, 14th Nov. Is in the freeholders, being burgage-holders of the ſaid borough.

Sarum, New.

1689, 1ſt April. Is in the ſelect number, viz. the mayor and corporation, conſiſting of fifty ſix perſons.

Scarborough.

1736, 21ſt April. Is in the common houſe, or common council of the ſaid borough, conſiſting of two bailiffs, two coroners, four chamberlains, and thirty ſix burgeſſes only.

Agreed to by the Houſe.

Seaford.

(1670, 10th Feb.)
(1 Dougl. 333.)
(3 Dougl. 22. 24. 29.) The bailiffs, jurors, and freemen, had not only voices in elections, but alſo that the election was in the populacy.

1761, 10th Dec. To refuſe the admiſſion of evidence in order to ſhew, that in the above determinations of the Houſe, the words, "bailiff, jurors, and freemen," mean, "ſuch bailiff, jurors, and freemen only, as are reſident within the ſaid town and port."

The word "alſo" not being in the MSS. journal but in the printed journal.

1792, 2d March. Reſolved. That the right of voting is not in the mayor, jurats and freeman, and alſo in the populacy *i. e.* in the inhabitants houſe-keepers paying ſcot and lot.

Re-

Reſolved. That the right of election, &c. is in the inhabitants houſe-keepers paying ſcot and lot.

3 Lud. 39. Affirmed on appeal. 18th Feb. 1795.

Shafteſbury.

Is not only in the mayor and burgeſſes of the ſaid borough.

A. D. 1695, 29th Feb.

Is only in the inhabitants of the ſaid borough paying ſcot and lot.

Shoreham, New.

Is in ſuch freeholders, and in the perſons who by the cuſtom and uſage of the ſaid borough had a right to vote at ſuch election (ſixty-nine perſons in this Act particularly named, freeholders of the ſaid borough, always and only excepted).

11 G. 3 c. 3. §. 6. to be publickly read before they proceed to election.

Shrewſbury.

Is only in the burgeſſes inhabiting within the ſaid borough, or in the ſuburbs thereof, paying ſcot and lot, and not receiving alms or charity.

1709, 20th Dec.

Is in the mayor, aldermen, and burgeſſes of the ſaid borough.

1714, 27th May.

Is only in the burgeſſes inhabiting in the ſaid borough, or in the ſuburbs thereof, paying ſcot and lot and not receiving alms or charity.

1723, 9th April. 1 Dougl. 463.

That the whole pariſhes of St. Chad, St. Mary, St. Alkmond, St. Julian, the Holy Croſs, and St. Giles, and the ſeveral vills of Hadnall, Acton, Reynold, Meriden, Hanwood, Grinſell, Ollerton, Onſlow, Preſton, Gubald, Pimley, and Merival, are not within the borough of Shrewſbury, or the ſuburbs thereof.

That the ſeveral vills of Birton, Betton, Alkmear, Lengwar, Calcot Whitley, Welback, Upper and Lower Roſſal, Shelton, Oxon, Woodcot, Horton, Munkmeal, and Gooſehill, in the pariſh of St. Chad's; Great and Little Berwick, Almond-Park, Newton, Albright-Huſley, Cotton-Hill, Leaton, Aſley, Merrington, Wollaſcot, Sanſaw, and Clive, in the pariſh of St. Mary; Hencot, Albright-Lee, Preſton-Montford, Dintle, and Arleſcot, in the pariſh of St. Alkmond; and Pully and Shelton, in the pariſh of St. Julian; are not part of the ancient borough of Shrewſbury, or the ſuburbs thereof.

That the pariſh of Holy Croſs and St. Giles is no part of the ancient borough of Shrewſbury, or the ſuburbs thereof.

Southampton.

A. D.

1689, 31ſt Dec. Is in the burgeſſes and inhabitants of the ſaid town.

1695, 17th March. The outliving burgeſſes, as well as the burgeſſes inhabitants, and other inhabitants paying ſcot and lot, have a right to vote for the town and county of the town of Southampton.

Southwark.

1702, 10th Nov. Is only in the inhabitants thereof paying ſcot and lot.

1714, 29 June. That the perſons inhabiting in the Mint, or rules of the Queen's Bench, in the borough of Southwark, and paying

paying a rent of ten pounds per annum, or upwards, have not a right to vote, though they do pay ſcot and lot within the ſaid borough.

It paſſed in the negative.

Stafford.

The ſons of burgeſſes, and thoſe who have ſerved apprentices ſeven years in the borough, have a right (upon demand thereof) to be made burgeſſes of the ſaid borough. A. D. 1710, 25th Jan.

Is in the mayor, aldermen, and burgeſſes reſiant within the ſaid borough. 1722, 27th Nov.

Perſons made burgeſſes of the ſaid borough ſince the death of John Dolphin, Eſq. late member of Parliament for the ſaid borough (not being ſons of burgeſſes or not having ſerved ſeven years apprenticeſhip within the ſaid borough), had not a right to vote in the late election of a burgeſs to ſerve in this preſent Parliament for the ſaid borough. 1724, 4th Feb. (1 Dougl. 212, 213.)

Stamford.

Is in the inhabitants, paying ſcot and lot, and not receiving alms or public charities. 1735, 8th March. 3 Dougl. 86.

Steyning.

Is in the inhabitants, paying ſcot and lot, and not receiving alms. 1701, April.

That the right was in the conſtables and houſeholders (inhabitants within the borough) paying ſcot and lot, and not receiving alms. 1710, 10th Feb.

In the inhabitants of ancient houſes, and houſes built on the 1791, 7th March.

ſcites

ſcites of ancient houſes within the borough being houſeholders paying ſcot and lot and not receiving alms.

But on the 4th April 1791, upon petition of appeal it was decided,

That the right of election is in the conſtable and houſe-holders inhabitants within the borough, paying ſcot and lot.

And a previous reſolution that none have a right to vote in reſpect of any houſes within the borough of Bramber, the tithing of Bidlington, or the manors of Charlton or King's Barns.

Sudbury.

A. D.

1702, 19th Jan. The ſons of freemen, born after their fathers were made free, and thoſe that have ſerved apprenticeſhips in the ſaid borough, have a right to vote, without any admiſſion in form to their freedom, or taking the oath of freemen.

1703, 6th Dec. Is only in the ſons of freemen, born after their fathers were made free, and in ſuch as have ſerved ſeven years apprenticeſhip, or are made freemen by redemption.

Tamworth.

1698, 17th March. Is in the inhabitants paying ſcot and lot, and in ſuch perſons as have freeholds within the ſaid borough, whether reſident in the ſaid borough or not.

1722, 23d Jan. Is in the inhabitants, being houſeholders, paying ſcot, and lot and not receiving alms.

Is

Taviſtock.

	A.D.
Is in the freeholders of inheritance in poſſeſſion, inhabiting within the ſaid borough.	1695, 13th March.
Is in the freeholders of inheritance in poſſeſſion, inhabiting within the ſaid borough, who have been or ſhall be preſented as ſuch by the jury of enquiry of the ſaid borough.	1696, 4th Feb.
Is in the freeholders of inheritance in poſſeſſion, inhabiting within the borough.	1702, 19th Jan.

Taunton.

Is in the inhabitants within the ſaid borough, being pot-wallers, and not receiving alms or charity.	1715, 28th July.

Thetford.

The charter of the ſixteenth of queen Elizabeth, granted to the borough of Thetford, is not duly nor legally ſurrendered.	1685, 3d May.
Is in the mayor, burgeſſes (which are ten), in the commonalty or common council (which are twenty), amounting in the whole to thirty-one.	1685, 7th June.

Totneſs.

That the perſons made free by the late king James's charter to the borough of Totneſs, have no right to vote by virtue of ſuch freedom.	1695, 4th March.
Is in the freemen not inhabiting, as well as the freemen inhabiting, within the ſaid borough of Totneſs.	

Tregony.

Agreed, that the right of election is in all the inhabitants that	1695, 5th March.

provide

provide for themſelves, whether they live under the ſame roof or not.

Truro.

A. D.

1689, 21ſt May. Is in the mayor and ſelect number of burgeſſes.

Wallingford.

1709, 15th Dec. Is in the mayor, aldermen, bailiffs, and eighteen aſſiſtants, *together with the inhabitants of the ſaid borough paying ſcot and lot*, and not receiving alms or charity.

Wareham.

1661, 15th Jan. Is in the mayor, magiſtrates, and freeholders, and all who pay ſcot and lot.

1747, 19th Jan. Is only in the mayor and magiſtrates of the ſaid borough, and in ſuch of the inhabitants as pay ſcot and lot, and in the freeholders of lands and tenements there, who have been, *bona fide* to their own uſe, in the actual occupation or in the receipt of the rents and profits of ſuch lands or tenements for the ſpace of *one whole year next before the election*, except the ſame came to ſuch freeholders by deſcent, deviſe, marriage, marriage-ſettlement, or promotion to ſome benefice in the church.

(1 Dougl. 213.)

Warwick.

1628, 3d May. Is in the commonalty of the ſaid town.

1722, 31ſt Jan. Is in ſuch perſons only as pay to church and poor in the ſaid borough.

Wells.

1695, 18th Feb. Is only in the mayor, maſters, and burgeſſes of the ſaid city.

Is

Is in the mayor, maſters, and burgeſſes of the ſaid city.

Is in the mayor, maſters, and burgeſſes of the ſaid city, and in ſuch perſons as are (by conſent of the mayor and common council of the ſaid city) admitted to their freedom in any of the ſeven trading companies of the ſaid city, on account of birth, ſervitude, or marriage. A. D. 1723, 2d May.

Is in the mayor, maſters, burgeſſes, and freemen of the ſaid city, who are admitted to their freedom in any of the ſeven companies within the ſaid city being thereunto entitled by birth, ſervitude, or marriage. 1729, 18th April.

Wendover.

Perſons coming by certificate to live in the borough of Wendover, have not thereby a right to vote. 1702, 21ſt Nov.

Weobly.

Is in the inhabitants of houſes of twenty ſhillings a year, paying ſcot and lot. 1698, 13th Jan.

Is in the inhabitants of the ancient vote-houſes of twenty ſhillings *per annum* value, and upwards, reſiding in the ſaid houſes forty days before the day of election, and paying ſcot and lot; and alſo in the owners of ſuch ancient vote-houſes paying ſcot and lot, who ſhall be reſident in ſuch houſes at the time of the election. 1736, 3d March.

Weſtbury.

The tenants of burgage-houſes, by leaſe for years abſolute, have a right to vote. 1702, 1ſt Dec.

Is

A. D.
1715, 1st June. Is in every tenant of any burgage tenement in fee, for lives or ninety-nine years, determinable on lives, or by copy of court-roll, paying a burgage-rent of four-pence or two-pence yearly, being reſident within the ſaid borough, and not receiving alms.

Weſtminſter.
1680, 15th Nov. The King's menial ſervants, not having proper houſes of their own within the city of Weſtminſter, have not right to give voices in the election of citizens to ſerve in Parliament for the ſaid city.

(1 Dougl. 160.) There is no determination of the right of election; but it ſeemed to be agreed to be in the inhabitants, houſeholders, paying or liable to pay ſcot and lot.---And ſince decided not to vary the right from common ſcot and lot.

Weymouth and *Melcombe-Regis.*
1714, 3d June. That it is the opinion of the committee that thoſe perſons who had no right of voting for the borough of Weymouth and Melcombe-Regis at Lady-day 1710, and not claiming by purchaſe for a valuable conſideration, or by will, or by deſcent ſince that time, had a right to vote in the laſt election of members to ſerve in Parliament for the ſaid borough.

1730, 7th May. Agreed, that the right of election for Weymouth is in the mayor, aldermen, bailiffs, and capital burgeſſes inhabiting in the borough, and

and in perſons ſeiſed of freeholds within the borough, and not receiving alms,

Whitchurch.

Is in the freeholders only of lands or tenements, in right of themſelves or their wives, not ſplit ſince ſtat. 7 & 8 W. 3. c. 4. A. D. 1708, 21ſt Dec.

Wilton.

The election of any perſon to be a burgeſs of Wilton, who has not taken the Sacrament of the Lord's Supper, according to the rights of the church of *England*, within one year before ſuch election, is a void election. 1702, 28th Nov.

Winchelſea.

The freemen of the port of Winchelſea are not obliged to qualify themſelves, by receiving the Sacrament according to the corporation act. 1711, 11th Feb.

Wincheſter.

Was *ſtated* to be in the mayor, recorder, aldermen, bailiffs, and corporation. 1690, 20th Oct.

Windſor.

Thoſe inhabitants only who pay ſcot and lot, have a right to vote. 1680, 4th Nov. 1689, 2d May.

The opinion of the committee, that the right of election is in the mayor, bailiffs, and ſelect number of burgeſſes only. 1690, 17th May.

It paſſed in the negative.

The mayor, bailiffs, and burgeſſes of New Windſor, have not the right of electing members to 1697, 5th April, and 17th May.

ſerve

serve in Parliament for the said borough.

The borough of New Windsor hath a right to send burgesses to Parliament by prescription.

All the inhabitants of the said borough have a right of electing members to serve in Parliament for the said borough.

Worcester.

A. D.

1693, 7th Feb. Is in the freemen not receiving alms.

1747, 11th Feb. Is in the citizens of the said city not receiving alms, *and admitted to their freedom by birth, or by servitude, or by redemption*, in order to trade within the said city.

Yarmouth, in the Isle of Wight.

1717, 11th April. The by-law made 21st September 1670 by the mayor and five chief burgesses of *Yarmouth* (being the major part of the chief burgesses then existing), for electing free burgesses, by the mayor and five chief burgesses, was a good bye law.

1769, 19th Jan. That Thomas Grimes, Esq; being elected a chief burgess during the pretended mayoralty of John Leigh, Esq; (who the House resolved, was not legally elected mayor of the said borough of Yarmouth on the 21st of September 1759), was not legally elected a chief burgess of the said borough, and was therefore incapable of being elected mayor of the

ſaid borough on the 21ſt of September 1765.

That the Rev. Dr. Walker and the Rev. Mr. John Oglander, being elected chief burgeſſes during the pretended mayoraly of the ſaid Thomas Grimes, were not legal chief burgeſſes of the ſaid borough.

That the election of the twenty-five free burgeſſes objected to by the counſel for the petitioners, elected during the pretended mayoralty of the ſaid T. G. Eſq; at an aſſemby in which the ſaid Dr. W. and Mr. O. attended and voted as two of the five chief burgeſſes in the election of the ſaid twenty burgeſſes, was illegal and void.

York.

A. D. 1735, 9th March.

Perſons whoſe freeholds lie within that part of the county of the city of York which is commonly called the *Aynſty*, have a right to vote for knights of the ſhire for the county of *York*.

No. VII.

The Counties, Cities, and Boroughs, which were ſummoned to ſend Members in the 23d and in the 25th and 26th of Edw. I.

d. diſcontinued. --- *d. & r.* diſcontinued and reſtored.

Counties.	*Cities and Boroughs.*
Bedford	Bedford
Berks	Reading
	Wallingford.
Bucks	
Cambridge	Cambridge
	Ely
Cornwall	Donheved
	Bodmin
	Helſton
	Liſkaratt
	Tregony, *d. & r.*
	Truro
Cumberland	Carliſle
	Cockermouth, *d. & r.*
	Egremond, *d.*
Devon	Barnſtaple
	Dartmouth
	Exeter
	Plymton
	Taviſtock
	Totneſs
	Aſhperton, *d.*
	Torriton, *d.*
	Sutton, *d.*
Derby	Derby

Dorſet

Counties.	*Cities and Boroughs.*
Dorſet	Bridport
	Dorcheſter
	Blandford, *d.*
	Wareham, *d.*
	Lyme
	Shaftſbury
Eſſex	Colcheſter
Glouceſter	Briſtol
	Glouceſter
Hereford	Hereford
	Leominſter
	Weobly, *d.* & *r.*
	Ledbury, *d.*
Hertford	Hertford, *d.* & *r.*
	St. Albans, *d.* & *r.*
Huntingdon	Huntingdon
Lancaſter	Lancaſter
	Liverpool, *d.* & *r.*
	Preſton, *d.* & *r.*
	Wigan, *d.* & *r.*
London	
Lincoln	Grimſby
	Lincoln
	Stamford
Kent	Canterbury
	Rocheſter
	Turnbridge, *d.*
Leiceſter	Leiceſter
Middleſex	
Norfolk	Norfolk
	Norwick
	Great Yarmouth *d.* & *r.*
Northampton	Northampton
Northumberland	Newcaſtle
	Bamburg, *d.*
	Canebrig, *d.*

Counties.	*Cities and Boroughs.*
Nottingham	Nottingham.
Oxon	Oxford
Rutland	
Salop	Salop
	Bridgnorth
Somerſet	Bath
	Bridgwater
	Taunton
	Wells
	Axebrugg, *d.*
	Milborne Port, *r.&d.*
	Ivelcheſter, *d. & r.*
Southampton	Alton, *d. & r.*
	Alresford, *d.*
	Baſingſtoke, *d.*
	Andover, *d. & r.*
	Newport, *d. & r.*
	Overton
	Portſmouth
	Southampton
	Wincheſter
Stafford	Stafford
Suffolk	Dunwich
	Ipſwich
	Orford, *d. & r.*
Surrey	Bletchingley
	Guilford
	Riegate
	Southwark
Suſſex	Arundell
	Bramber
	Chicheſter
	Horſham
	Lewes
	Shorham

Counties.	*Cities and Boroughs.*
Suſſex	Seaford, *d.* & *r.*
	Steyning, *d.* & *r.*
Warwick	Warwick
	Coventry
Wilts.	Bedwin
	Bradford, *d.*
	Calne
	Chippingham
	Cricklade
	Devizes
	Dunton
	Ludgerſhall
	Marlborough
	New Sarum
	Old Sarum
	Wilton
Weſtmorland	Appleby
Worceſter	Droitwich
	Eveſham, *d.* & *r.*
	Worceſter
	Brem, *d.*
	Duddelegh, *d.*
	Kidderminſter, *d.*
	Perſhore, *d.*
York	Beverley, *d.* & *r.*
	Hadon, *d.* & *r.*
	Malton, *d.* & *r.*
	Pontefract, *d.* & *r.*
	Rippon, *d.* & *r.*
	Scarborough
	Thirſk, *d.* & *r.*
	York
	Alverton
	Jarvall, *d.*
	Pickering, *d.*
	Tyckull, *d.*

The Counties, Cities and Boroughs, which have been reſtored and created from the Time of Hen. 8. inclusive.

Reſtored.	*Members.*	*Created.*	*Members.*
H. 8. Oxford	2	Angleſey Co.	1
		Beaumaris	1
		Brecknock, Co.	1
		Brecknock, Town	1
		Cardigan, Co.	1
		Cardigan, Town	1
		Carmarthen, Co.	1
		Carmarthen, Town	1
		Carnarvon, Co.	1
		Carnarvon, Town	1
		Denbigh, Co.	1
		Denbigh, Town	1
		Flint, Co.	1
		Flint, Town	1
		Glamorgan, Co.	1
		Cardiff	1
		Merioneth, Co.	1
		Montgomery, Co.	1
		Montgomery, Town	1
		Pembroke, Co.	1
		Pembroke, Town	1
		Haverfordweſt	1
		Radnor, Co.	1
		New Radnor	1
		Monmouth, Co.	2
		Monmouth, Town	1
		Cheſter, Co.	2
		Cheſter, City	2
		Berwick on Tweed	2
Reſtored,	2	*Created,*	33

Reſtored		*Members.*
1 *E.* 6.	Lancaſter	2
	Preſton	2
	Wigan	2
	Liverpool	2
6 *E.* 6.	St. Albans	2
	Petersfield	2
	Litchfield	2
	Heydon	2
	Thirſk	2
	Ripon	2
	Reſtored	20
1 *Mar.*	Droitwich	2
	Woodſtock	2
	Reſtored	4
1 *Eliz.*	Tregony	2
5 *Eliz.*	Beverley	2
13 *El.*	Eaſt Retford	2

Created.		*Members.*
1 *E.* 6.	Thetford	2
	Peterborough	2
	Brackley	2
	Boſton	2
6 *E.* 6.	Saltaſh	2
	Camelford	2
	Weſtlow	2
	Grampound	2
	Boſſiney	2
	Michell	2
	Newport	2
	Maidſtone	2
	Weſtminſter	2
	Penryn	2
	Created	28
1 *Mar.*	Ayleſbury	2
	Morpeth	2
	Banbury	1
	Knareſborough	2
	Boroughbridge	2
2 & 3	Higham Ferrers	1
P. & M.	Abingdon	1
	St. Ives	2
	Aldborough	2
	Caſtle-Riſing	2
	Created	17
1 *Eliz.*	Newton	2
	Clitheroe	2
	Minehead	2

Reſtored.		*Members.*	*Created.*		*Members.*
27 *El.*	Yarmouth	2	1 *Eliz.*	Sudbury	2
	Newport	2		St. Germains	2
	Andover	2		St. Maws	2
				Stockbridge	2
				Tamworth	2
				Eaſtloe	2
				Fowey	2
				Cirenceſter	2
				Queenborough	2
				Chriſt-church	2
				Alboro' (Suff.)	2
				Eye	2
				Corfe-Caſtle	2
				Killington	2
				Buralſton	2
				Biſhop's Caſtle	2
				Newton (I. W.)	2
				Lymington	2
				Whitchurch	2
				Haſlemere	2
				Richmond	2
	Reſtored	12		*Created*	48
2 *Ja.* 1.	Harwich	2	1 *Ja.* 1.	Cambridge (Un.)	2
3 *Ja.* 1.	Eveſham	2		Oxford (Un.)	2
18 *J.* 1.	Ilcheſter	2		Bewdley	1
19 *J.* 1.	Pontefract	2		Tewkſbury	2
21 *J.* 1.	Amerſham	2	13 *J.* 1.	Tiverton	2
	Wendover	2	18 *J.* 1.	St. Edm. Bury	2
	Marlow	2			
	Hertford	2			
	Reſtored	16		*Created*	11

Restored.		*Members.*	*Created.*		*Members.*
3 & 4	Weobley	2	*Ch.* 1.	None	
Ch. 1.	Milborne Port	2			
15 *C.* 1.	Seaford	2			
16 *C.* 1.	Cockermouth	2			
	Oakhampton	2			
	Honiton	2			
	Ashburton	2			
	Northallerton	2			
	Malton	2			
	Restored	18			
Ch. 2.	None		25 *C.* 2.	Durham, Co.	2
				Durham, City	2
			29 *C.* 2.	Newark on Trent	2
				Created	6

Henry 8.	2	*Henry* 8.	33
Edward 6.	20	*Edward* 6.	28
Mary	4	*Mary*	17
Elizabeth	12	*Elizabeth*	48
James 1.	16	*James* 1.	22
Charles 1.	18	*Charles* 2.	6
	72		143
			72
Total restored and created in those Reigns			215

No. VIII.

Warrant for iſſuing Parliamentary Writs.

GEORGE the Third, by the grace of God, of Great Britain, &c.—To our right truſty and right well beloved Edward Lord Thurlow, Lord High Chancellor of our kingdom of Great Britain, greeting. Whereas, We, by the advice of our Privy Council, for certain and urgent cauſes concerning Us, the good eſtate and commonwealth of this our realm, and of the Church of England, and for the good order and continuance of the ſame, have appointed and ordained a Parliament to be holden at our city of Weſtminſter, the day of next enſuing, in which caſe diverſe and ſundry writs are to be iſſued forth, under our Great Seal of Great Britain, as well for the prelates, biſhops, and nobility of this our realm, as alſo for the election of knights, citizens, and burgeſſes of the ſeveral counties, cities, and boroughs, and towns of the ſame, to be preſent at the ſaid Parliament at the day and place aforeſaid; whereupon We will and command you forthwith, upon the receipt hereof, and my warrant of the ſame, to cauſe ſuch and ſo many writs to be made and ſealed under our Great Seal, for the accompliſhing of the ſame, as in like caſes hath been heretofore uſed and accuſtomed: And this bill, ſigned with our own hand, ſhall be as well unto you, as to every ſuch clerk and clerks as ſhall make and paſs the ſame, a ſufficient warrant or diſcharge in that behalf given.

No. IX.

Form of the Lord Steward's Deputation on a New Parliament.

WILLIAM Earl Talbot, Lord Steward of his Majeſty's Houſhold, and one of his Majeſty's moſt honourable Privy Council, to all to whom theſe preſents ſhall come: KNOW YE, That I the ſaid Lord Steward, by virtue of my ſaid office of Lord Steward, HAVE conſtituted, named, and appointed, AND by theſe preſents, DO conſtitute name, and appoint [about threeſcore and fifteen noblemen and gentlemen], or any ſix, five, four, three, two, or one of them, my deputy and deputies, in my place and ſtead, to tender and adminiſter the oaths mentioned in a ſtatute made in the firſt year of the reign of their late Majeſties King William and Queen Mary, intituled, *An Act for removing and preventing all doubts and diſputes concerning the aſſembling and ſitting of this preſent Parliament*, according to the directions of the ſaid ſtatute, and of all and every other ſtatute and ſtatutes, directing the taking the ſaid oaths before me, to all and every perſon and perſons, who is, are, or ſhall be, elected or appointed a knight, citizen, burgeſs, baron of any of the five ports, or commiſſioners for the ſhires or burghs of the preſent Parliament, appointed to meet the day of and to take and receive the oaths of all and every the ſaid perſon and perſons, who is, are, or ſhall be elected or appointed a knight, citizen, burgeſs, baron of any of the five ports, or commiſſioners

ſioners for the ſhires or burghs aforeſaid, for the ſaid Parliament; ALSO, to tender and adminiſter the oath mentioned in a ſtatute made the ſeventh year of the reign of his late Majeſty, intituled, *An Act for the better regulating the election of members to ſerve in the Houſe of Commons, for that part of Great Britain called Scotland, and for incapacitating the judges of the Court of Seſſion, Court of Juſticiary, and barons of the Court of Exchequer in Scotland, to be elected, or to ſit or vote as member of the Houſe of Commons*, according to the directions of another ſtatute made in the ſixteenth year of his late Majeſty's reign, directing the ſaid oath to be taken before me, by all and every perſon and perſons, who is, are, or ſhall be choſen a member to ſerve in Parliament for any ſhire or ſtewartry, within that part of Great Britain called Scotland, and who was not, were not, or ſhall not, be preſent at the meeting of election; AND to take and receive the oath of all and every ſuch perſon and perſons, giving them, my ſaid deputies, ſix, five, four, three, two, or one of them, full power and authority to execute and perform the matters herein-before mentioned, RATIFYING and confirming all and whatſoever my deputies or deputy ſhall lawfully do and perform in this behalf, in as ample, perfect, and full manner, as if I myſelf had perſonally been preſent and done the ſame; in teſtimony whereof, I the ſaid Lord Steward have hereunto ſet my hand and ſeal, this day of in the twentieth year of the reign of, &c. and in the year of our Lord one thouſand ſeven hundred and eighty.

Sealed and delivered
(being firſt duly ſtamped
in the preſence of

TALBOT (L. S.)

No. X.

Writ of Summons.

GEORGE the Third, by the grace of God, of Great Britain, &c.—To his moſt noble couſin, Hugh Duke of Northumberland, &c. greeting. Inaſmuch as by the advice and conſent of our Privy Council, We have ordained our Parliament to be held at our city of Weſtminſter, on the day of next enſuing, by reaſon of ſome arduous and urgent affairs concerning Us, the ſtate and defence of our kingdom of Great Britain and Church of England, to have conference and treaty with you and the prelates, biſhops, and peers of our ſaid kingdom, We firmly enjoin you, upon the faith and allegiance in which you are bound to Us, that, taking into conſideration the weightineſs of the ſaid affairs, and the eminent dangers, laying aſide all excuſe, you be perſonally preſent on the ſaid day and place, with Us, and the prelates, biſhops, and peers aforeſaid, to treat and give your advice on the ſaid affairs; and this you are in nowiſe to omit, as you love Us, our honour and ſafety, and the defence of the aforeſaid kingdom and church, and the diſpatch of the aforeſaid affairs. Witneſs Ourſelf, at Weſtminſter, the day of in the year of our reign.

No. XI.

The Writ to the Sheriff, on a General Election.

GEORGE the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and ſo forth.—To the ſheriff of the county of Oxford, greeting. Whereas, by the advice and aſſent of our Council, for certain arduous and urgent affairs concerning Us, the ſtate and defence of our kingdom of Great Britain and the Church, We have ordered a certain Parliament to be holden at our city of Weſtminſter, on the twenty-ninth day of November next enſuing, and there to treat and have conference with the prelates, great men, and peers of our realm, We command and ſtrictly enjoin you, that (proclamation being made of the day and place aforeſaid, in your next county-court to be holden after the receipt of this our writ) two knights of the moſt fit and diſcreet of the ſaid county, girt with ſwords, and of the univerſity * of Oxford two burgeſſes, and of every city of that county two citizens, and of every borough in the ſame county two burgeſſes, of the moſt ſufficient and diſcreet, freely and indifferently *by thoſe who at ſuch proclamation ſhall be preſent, according to the*

* The writs to the ſheriff are all in the ſame form, except that in *this* and in *that* to the ſheriff of *Cambridgeſhire*, there is a clauſe for the election of members for the reſpective univerſities. *Dougl. Hiſt. Controv. Elect.* 450.

form

form of the ſtatutes in that caſe made and provided, *you cauſe to be elected; and the names of thoſe knights*, citizens, and burgeſſes, *ſo to be elected* (whether they be preſent or abſent), you cauſe to be inſerted in certain indentures to be thereupon made between you and thoſe who ſhall be preſent *at ſuch election*, and then at the day and place aforeſaid you cauſe to come, in ſuch manner that the ſaid knights, for themſelves and the commonalty of the ſame county, and the ſaid citizens and burgeſſes for themſelves and the commonalty of the ſaid univerſities, cities, and boroughs reſpectively, may have from them full and ſufficient power to do and conſent to thoſe things which then and there, by the common council of our ſaid kingdom (by the bleſſing of God) ſhall happen to be ordained upon the aforeſaid affairs, ſo that for want of ſuch power, or though an improvident election of the ſaid knights, citizens, or burgeſſes, the aforeſaid affairs may in no wiſe remain unfiniſhed; *willing nevertheleſs, that neither you nor any other ſheriff of this our ſaid kingdom be in any wiſe elected*; and that the election in your full county ſo made diſtinctly and openly, under your ſeal and the ſeals of thoſe who ſhall be preſent at ſuch election, you do certify to us in our Chancery, at the day and place aforeſaid without delay, remitting to us one part of the aforeſaid indentures annexed to theſe preſents, together with this writ. Witneſs Ourſelf at Weſtminſter, the firſt day of October, in the fourteenth year of our reign.

foreign prince, perſon, prelate, ſtate or potentate, hath, or ought to have, any juriſdiction, power, ſuperiority, pre-eminence, or authority, eccleſiaſtical, or ſpiritual, within this realm.

So help me God.

No. XVI.

The Form of the Declaration of Teſt, appointed by ſtat. 30. C. 2. ſtat. 2. c. 1. ſ. 3.

I A. B. do ſolemnly and ſincerely, in the preſence of God, profeſs, teſtify, and declare, That I do believe that in the Sacrament of the Lord's Supper, there is not any tranſubſtantiation of the elements of bread and wine, into the body and blood of Chriſt, at or after the conſecration thereof by any perſon whatſoever; and that the invocation or adoration of the Virgin Mary, or any other ſaint, and the ſacrifice of the maſs, as they are now uſed in the Church of Rome, are ſuperſtitious and idolatrous; and I do ſolemnly, in the preſence of God, profeſs, teſtify, and declare, That I do make this declaration, and every part thereof, in the plain and ordinary ſenſe of the words read unto me, as they are commonly underſtood by Engliſh Proteſtants, without any evaſion, equivocation, or mental reſervation whatſoever, and without any diſpenſation already granted me for this purpoſe by the Pope or any other authority or perſon whatſoever, or without any hope of any ſuch diſpenſation

penſation from any perſon or authority whatſoever, or without thinking that I am or may be acquitted before God or man, or abſolved of this declaration, or any part thereof, although the Pope, or any other perſon or perſons, or power whatſoever, ſhould diſpenſe with or annul the ſame, or declare that it was null or void from the beginning.

No. XVII.

The Form of the Declaration of Fidelity, appointed to be made and ſubſcribed by Quakers, by ſtat. 8 G. 2. *c.* 6. *ſ.* 1.

I A. B. do ſolemnly and ſincerely promiſe and declare, That I will be true and faithful to King George; and do ſolemnly, ſincerely, and truly profeſs, teſtify, and declare, That I do from my heart abhor, deteſt, and renounce, as impious and heretical, that wicked doctrine and poſition, *that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be depoſed or murdered by their ſubjects, or any other whatſoever.* And I do declare, that no foreign prince, perſon, prelate, ſtate, or potentate, hath or ought to have any power, juriſdiction, ſuperiority, pre-eminence, or authority, eccleſiaſtical or ſpiritual, within this realm.

No. XVIII.

The Form of the Oath of Abjuration, as altered by ſtat. 1 G. ſt. 1. c. 13. ſ. 1. to be taken after the Demiſe of Queen Anne, and as the ſame is now to be taken.

I A. B. do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my conſcience, before God and the world, That our Sovereign Lord King George is lawful and rightful King of this realm, and all other his Majeſty's dominions and countries thereunto belonging. And I do ſolemnly and ſincerely declare, That I do believe in my conſcience, that the perſon pretended to be Prince of Wales during the life of the late King James, and ſince his deceaſe, pretending to be and taking upon himſelf the ſtile and title of King of England by the name of James the Third, or of Scotland by the name of James the Eighth, or the ſtile and title of King of Great Britain, hath not any right or title whatſoever to the crown of this realm; or any other the dominions thereto belonging; and I do renounce, refuſe, and abjure any allegiance or obedience to him. And I do ſwear that I will bear faith and true allegiance to his Majeſty King George, and him will defend to the utmoſt of my power, againſt all traiterous conſpiracies and attempts whatſoever which ſhall be made againſt his perſon, crown and dignity. And I will do my utmoſt endeavour to diſcloſe and make known to his Majeſty and his ſucceſſors, all treaſons and traiterous conſpiracies which I ſhall know to be againſt him, or any of them. And do faithfully promiſe,

miſe, to the utmoſt of my power to ſupport, maintain, and defend the ſucceſſion of the crown againſt him the ſaid James, and all other perſons whatſoever; which ſucceſſion, by an act, intituled, *An Act for the further limitation of the Crown and better ſecuring the rights and liberties of the ſubject*, is and ſtands limited to the Princeſs Sophia, electoreſs and ducheſs dowager of Hanover, and the heirs of her body, being Proteſtants. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever; and I do make this recognition, acknowledgment, abjuration, renunciation, and promiſe, heartily, willingly, and truly, upon the true faith of a Chriſtian.

So help me God.

(See the time and form of taking this oath preſcribed, Stat. 13 *W.* 3. *c.* 6. *ſ.* 10.)

No. XIX.

The Form in which the Effect of the Abjuration is to be taken by Quakers, appointed by ſtat. 8 *G. c.* 6. *ſ.* 1.

I A. B. do ſolemnly, ſincerely, and truly acknowledge, profeſs, teſtify, and declare, That King George is lawful and rightful King

of this realm, and of all other his dominions and countries thereunto belonging: And I do ſolemnly and ſincerely declare, That I do believe the perſon pretended to be the Prince of Wales, during the life of the late King James, and, ſince his deceaſe, pretending to be and taking upon himſelf the ſtile and title of King of England by the name of James the Third, or of Scotland by the name of James the Eighth, or the ſtile and title of King of Great Britain, hath not any right or title whatſoever to the Crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuſe any allegiance or obedience to him: And I do ſolemnly promiſe, that I will be true and faithful, and bear true allegiance to King George, and to him will be faithful againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown, or dignity: And I will do my beſt endeavour to diſcloſe and make known to King George, and his ſucceſſors, all treaſons and traiterous conſpiracies which I ſhall know to be againſt him or any of them: And I will be true and faithful to the ſucceſſion of the Crown againſt him the ſaid James, and all other perſons whatſoever, as the ſame is and ſtands ſettled by an Act, intituled, *An Act declaring the rights and liberties of the ſubjects, and ſettling the ſucceſſion of the Crown to the late Queen Anne, and the heirs of her body being Proteſtants*; and as the ſame, by one other Act, intituled, *An Act for the further limitation of the Crown, and better ſecuring the rights and liberties of the ſubject*, is, and ſtands ſettled and entailed, after the deceaſe of the ſaid late Queen, and for default

default of iſſue to the ſaid late Queen, to the late Princeſs Sophia, electoreſs and ducheſs dowager of Hanover, and the heirs of her body, being Proteſtants. And all theſe things I do plainly and ſincerely acknowledge, promiſe, and declare, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever; and I do make this recognition, acknowledgment, renunciation, and promiſe, heartily, willingly, and truly.

No. XX.

The Form appointed by ſtat. 8 G. *c.* 6. *ſ.* 1. *in which the Effect of the Freeholder's Oath is to be adminiſtered to Quakers.*

I A. B. do ſolemnly, ſincerely, and truly declare and affirm.

No. XXI.

The Liveryman's Oath, appointed by 11 G. *c.* 18. *ſ.* 1.

YOU do ſwear that you are a freeman of London, and a liveryman of the company of and ſo have been for the ſpace

of twelve calendar months; and that the place of your abode is at in and that you have not polled at this election.

So help you God.

No. XXII.

The Elector's Oath, to be taken by 2 *G.* 2. *c.* 24. *ſ.* 1.

I A. B. do ſwear [*or, being one of the people called Quakers, I A. B. do ſolemnly affirm*] I have not received, or had by myſelf, or any perſon whatſoever in truſt for me, or for my uſe and benefit, directly or indirectly, any ſum or ſums of money, office, place, or employment, gift or reward, or any promiſe or ſecurity for any money, office, employment, or gift, in order to give my vote at this election; and that I have not before been polled at this election.

No. XXIII.

The Freeholder's Oath, appointed by 18 *G.* 2. *c.* 18. *ſ.* 1.

YOU ſhall ſwear [*or, being one of the people called Quakers, you ſhall ſolemnly affirm*], That you are a freeholder in the county of

of and have a freehold eſtate, conſiſting of [*ſpecifying the nature of ſuch freehold eſtate, whether meſſuage, land, rent, tithe, or what elſe; and if ſuch freehold eſtate conſiſts in meſſuages, lands, or tithes, then ſpecifying* in whoſe occupation the ſame are; *and if in rents, then ſpecifying the names of the owners or poſſeſſors of the lands or tenements out of which ſuch rent is iſſuing, or of ſome or one of them*] lying or being at in the county of of the clear yearly value of forty ſhillings, over and above all rents and charges payable out of or in reſpect of the ſame; and that you have been in the actual poſſeſſion or receipt of the rents and profits thereof, for your own uſe, above twelve calendar months, or that the ſame came to you within the time aforeſaid, by deſcent, marriage, marriage-ſettlement, deviſe, or promotion to a benefice in a church, or by promotion to an office; and that ſuch freehold eſtate has not been granted or made to you fraudulently, on purpoſe to qualify you to give your vote; and that the place of your abode is at in and that you are twenty-one years of age, as you believe; and that you have not been polled before at this election.

No. XXIV.

The Freeholder's Oath for Cities and Towns, appointed by 19 G. 2. *c.* 28. *ſ.* 1.

YOU ſhall ſwear [*or, being a Quaker, you ſhall ſolemnly affirm*], That you have a freehold eſtate, conſiſting of [*ſpecifying the nature of ſuch freehold eſtate, whether meſſuage, land, rent, tithe, or what elſe; and if ſuch freehold eſtate conſiſts in meſſuages, lands or tithes, then ſpecifying in whoſe occupation the ſame are; and if rent, then ſpecifying the names of the owners or poſſeſſors of the lands or tenements out of which ſuch rent is iſſuing, or of ſome or one of them*] lying or being in the city and county [*or town and county, as the ſame may be*] of of the clear yearly value of forty ſhillings, over and above all rents and charges payable out of or in reſpect of the ſame; and that you have been in the actual poſſeſſion or receipt of the rents and profits thereof, for your own uſe, above twelve calendar months; or that the ſame came to you within the time aforeſaid, by deſcent, marriage, marriage-ſettlement, deviſe, or promotion to a benefice in a church, or by promotion to an office; and that ſuch freehold eſtate has not been granted or made to you fraudulently, on purpoſe to qualify you to give your vote; and that the place of your abode, is at in and that you are twenty-one years of age; as you believe; and that you have not been polled before at this election.

No. XXV.

Oath to be taken by a Voter previous to polling, if required by any Candidate or any Voter in any Borough or City.

I DO ſwear [*or, being a Quaker, do affirm*], That my name is A. B.; and that I am [*ſpecifying the addition, profeſſion, or trade of ſuch perſon*]; and that the place of my abode is at in the county of [*and if it is a town conſiſting of more ſtreets than one, ſpecifying what ſtreet*]; and that I have not before polled at this election; and that I verily believe myſelf to be of the full age of twenty-one years.

No. XXVI.

Writ for new Election of one Citizen for the City of Weſtminſter.

GEORGE the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c.—To our ſheriff of the county of M. greeting. Whereas, Sir P. W, Knight of the moſt honourable Order of the Bath, was lately choſen one of the citizens for the city of W. in your county, for our preſent Parliament, ſummoned to be holden at our city of W. the day of

of in the year of our reign, and from thence by our ſeveral writs prorogued to and until the day of in the ſame year, on which day our ſaid Parliament was begun and held, and from thence by ſeveral adjournments and prorogations was adjourned and prorogued unto the day of and there now holden: And whereas the ſaid Sir P. W. being ſo choſen a citizen for the ſaid city as aforeſaid, is ſince dead, as, by a letter of our right truſty and well-beloved counſellor, Sir —— ——, Speaker of our Lower Houſe of Parliament, more fully and plainly appears; by means whereof our ſubjects of the ſaid city are deprived of one citizen to treat for the benefit of the ſame city in our ſaid Parliament: Nevertheleſs, We being unwilling that the commonalty of our kingdom in our ſaid Parliament aſſembled, to treat of buſineſs concerning Us, the ſtate and defence of our kingdom and the Church, from the aforeſaid cauſe ſhould be diminiſhed or leſſened, whereby thoſe affairs may not have a due end, We command you, that, in the place of Sir P. W. within the city aforeſaid, one other fit and diſcreet citizen of the aforeſaid city (proclamation being firſt made of the premiſes, and of the day and place), freely and indifferently, by thoſe who ſhall be preſent at the proclamation, according to the form of the ſtatute in that caſe made and provided, you cauſe to be elected; and the name of ſuch citizen (whether, at the ſaid election, he ſhall be preſent or abſent) to be inſerted in certain indentures to be thereupon made between you and them, who ſhall be preſent at ſuch

ſuch election, and to cauſe him to come to the ſaid Parliament; ſo that the ſame citizen, ſo to be elected, may have full power and ſufficient authority, for himſelf, and the commonalty of the aforeſaid city, to do and conſent to thoſe things which in our Parliament aforeſaid, by the common council of our realm (by the bleſſings of God,) ſhall happen to be ordained upon the aforeſaid affairs: Willing, nevertheleſs, that neither you, nor any other ſheriff in this our kingdom in anywiſe be elected; and the election ſo made, diſtinctly and openly, under your ſeal, and the ſeals of them who ſhall be preſent at ſuch election, certify unto us in our Chancery forthwith, remitting to us one part of the aforeſaid indentures annexed to theſe preſents, together with this writ. Witneſs ourſelf at Weſtminſter the day of in the year of our reign.

Yorke and Yorke.

Wrote upon the label to the ſaid writ as following, viz.

To the ſheriff of the county of M.---A writ for a new election of one citizen for the city of W.

Yorke and Yorke.

The execution of this writ appears in certain ſchedules hereunto annexed.

R. S. Eſq; and S. L. Eſq; } Sheriff.

No. XXVII.

Precept from Sheriff of M. to the Bailiff of W. for the Election of one Citizen for the ſaid City.

MIDDLESEX.—Sir C. A. knight, and Sir R. G. knight, ſheriff of the ſaid county, to the bailiff of the liberty of the dean and chapter of the collegiate church of St. Peter, at W. in the ſaid county greeting. Know, that I have received a certain writ of our Lord the King, to me directed, the tenor whereof followeth [*here follows the writ* verbatim]; and becauſe the execution of the ſaid writ belongs to you, therefore, by virtue of the ſaid writ, I require you, that you forthwith cauſe a citizen to be elected for the ſaid city, in the place of the ſaid P. W. according to the command of the ſaid writ; and how this my warrant ſhall be executed you ſhall make known to me, immediately after the ſaid election made; ſo that I may certify the ſame, together with the ſaid writ, and this precept return to our Lord the King, in his Chancery forthwith.—Hereof fail not.—This is your warrant.—Given under the ſeal of my office, dated the day one thouſand ſeven hundred and

R. S. and S. L. } Sheriff

The execution of this precept appears in a certain ſchedule hereunto annexed.

J. C. Eſq; Bailiff.

No. XXVIII.

The Indenture of Election.

THIS Indenture, made in the liberty of W. in the county of M. the day of in the year of the reign, &c. between Sir C. A. knight, and Sir R. G. knight, ſheriff of the county of M. aforeſaid, of the one part, and J. C. eſq; bailiff of the liberty of the dean and chapter of the collegiate church of St. Peter's W. in the county aforeſaid, Sir J. C. baronet, Sir R. G. baronet, Sir C. D. knight of the moſt honourable Order of the Bath, the honourable W. L. G. S. F. R. baronet, the right honourable F. H. commonly called Lord Viſcount D. E. F. and N. H. eſqrs. F. F. eſq. Sir W. I. baronet, C. B. eſq. J. G. eſq. and many other citizen, burgeſſes, and inhabitants of the city, town, and borough of W. of the other part, witneſſeth, That by virtue of a certain precept directed from the ſaid ſheriff to the bailiff, and ſewed to this indenture (proclamation of the premiſes in ſaid precept firſt mentioned, and of the day and place, as in the ſaid precept is directed, firſt being made), the citizens who were preſent at the ſaid proclamation, have freely and indifferently, according to the form of the ſtatute in that caſe made and provided, and according to the tenor and effect of the aforeſaid precept, and of the writ in the ſaid precept recited, choſen one citizen of the moſt diſcreet and ſufficient of the city and liberty aforeſaid,

No. XXVII.

Precept from Sheriff of M. to the Bailiff of W. for the Election of one Citizen for the ſaid City.

MIDDLESEX.—Sir C. A. knight, and Sir R. G. knight, ſheriff of the ſaid county, to the bailiff of the liberty of the dean and chapter of the collegiate church of St. Peter, at W. in the ſaid county greeting. Know, that I have received a certain writ of our Lord the King, to me directed, the tenor whereof followeth [*here follows the writ* verbatim]; and becauſe the execution of the ſaid writ belongs to you, therefore, by virtue of the ſaid writ, I require you, that you forthwith cauſe a citizen to be elected for the ſaid city, in the place of the ſaid P. W. according to the command of the ſaid writ; and how this my warrant ſhall be executed you ſhall make known to me, immediately after the ſaid election made; ſo that I may certify the ſame, together with the ſaid writ, and this precept return to our Lord the King, in his Chancery forthwith.—Hereof fail not.—This is your warrant.—Given under the ſeal of my office, dated the day one thouſand ſeven hundred and

R. S. and S. L. } Sheriff

The execution of this precept appears in a certain ſchedule hereunto annexed.

J. C. Eſq; Bailiff.

No. XXVIII.

The Indenture of Election.

THIS Indenture, made in the liberty of W. in the county of M. the day of in the year of the reign, &c. between Sir C. A. knight, and Sir R. G. knight, ſheriff of the county of M. aforeſaid, of the one part, and J. C. eſq; bailiff of the liberty of the dean and chapter of the collegiate church of St. Peter's W. in the county aforeſaid, Sir J. C. baronet, Sir R. G. baronet, Sir C. D. knight of the moſt honourable Order of the Bath, the honourable W. L. G. S. F. R. baronet, the right honourable F. H. commonly called Lord Viſcount D. E. F. and N. H. eſqrs. F. F. eſq. Sir W. I. baronet, C. B. eſq. J. G. eſq. and many other citizen, burgeſſes, and inhabitants of the city, town, and borough of W. of the other part, witneſſeth, That by virtue of a certain precept directed from the ſaid ſheriff to the bailiff, and ſewed to this indenture (proclamation of the premiſes in ſaid precept firſt mentioned, and of the day and place, as in the ſaid precept is directed, firſt being made), the citizens who were preſent at the ſaid proclamation, have freely and indifferently, according to the form of the ſtatute in that caſe made and provided, and according to the tenor and effect of the aforeſaid precept, and of the writ in the ſaid precept recited, choſen one citizen of the moſt diſcreet and ſufficient of the city and liberty aforeſaid,

aforeſaid, (that is to ſay) the honourable E. C. eſq. to which ſaid E. C. ſo elected, the aforeſaid citizens have given and granted full and ſufficient power for themſelves and the commonalty of the city, town, borough, and liberty aforeſaid, to do and conſent to thoſe things, which, at the ſaid Parliament by the common council of the ſaid kingdom (with God's aſſiſtance) ſhall happen to be ordained upon the affairs in the ſaid precept ſpecified, according to the form and effect of the ſaid precept. In witneſs whereof, as well the ſaid ſheriff as the aforeſaid bailiff, citizens, burgeſſes, and inhabitants of the city, town, borough, and liberty aforeſaid, to theſe indentures their ſeals have interchangeably put the day and year firſt above mentioned.

No. XXIX.

The Form of the Candidate's Oath, to be taken (if required) by ſtat. 9 Ann. c. 5. ſ. 5.

I A. B. do ſwear, That I truly, and *bona fide*, have ſuch an eſtate in law or equity, to and for my own uſe and benefit of or in lands, tenements, or hereditaments (over and above what will ſatisfy and clear all incumbrances that may affect the ſame), of the annual value of ſix hundred pounds, above reprizes, as doth qualify me to be elected and returned to ſerve as a member for the county of according to the tenor and true meaning of the

the Act of Parliament in that behalf; and that my ſaid lands, tenements, or hereditaments, are lying or being within the pariſh, townſhip, or precinct of or in the ſeveral pariſhes, townſhips, or precincts of in the county of or in the ſeveral counties of [*as the caſe may be*].

The like Oath (*mutatis mutandis*), as to the value of three hundred pounds, to be taken by candidates for a city, borough, &c.

No. XXX.

Oath of the Members, appointed to be taken by 33 G. 2. c. 20. ſ. 1.

I A. B. do ſwear, That I truly, and *bona fide*, have ſuch an eſtate in law or equity, and of ſuch value, and to and for my own uſe and benefit, of or in lands, tenements, or hereditaments (over and above what will ſatisfy and clear all incumbrances that may affect the ſame), as doth qualify me to be elected and returned to ſerve as member for the place I am returned for, according to the tenor and true meaning of the Acts of Parliament in that behalf; and that ſuch lands, tenements, or hereditaments, do lie as deſcribed in the paper or account ſigned by me, and now delivered to the clerk of the Houſe of Commons.

So help me God.

No. XXXI.

Account to be ſigned by every Member, by ſtat. 33 G. 2. *c.* 20.

I A. B. of am really, and *bona fide*, ſeiſed of an annuity of rent-charge, for my own uſe and benefit, of the clear yearly value of forty ſhillings, above all rents and charges payable out of the ſame, wholly iſſuing out of freehold lands, tenements, or hereditaments, belonging to C. D. of ſituate, lying, and being in the pariſh, townſhip, or place, or in the pariſhes, townſhips, or places of E. in the county of without any truſt, agreement, matter, or thing, to the contrary notwithſtanding; and I, or the perſon or perſons under whom I claim, was or were ſeiſed of the ſaid annuity or rent-charge, before the firſt day of June, one thouſand ſeven hundred and ſixty-three.

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